

## The Analysis of *Murabahah bil Wakalah* Agreements Implementation Consistency toward Sharia Financial Institutions in Indonesia

**Moh. Wahyu Al Waris\***

University of Jember, Indonesia

**Nuzulia Kumala Sari**

University of Jember, Indonesia

\*Corresponding Author's Email: [alwariswahyumohammad@gmail.com](mailto:alwariswahyumohammad@gmail.com)

Article	Abstract
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## Introduction

Indonesia is one of the countries in the world where the majority of the population is Muslim. In economic activities, Financial institutions in Indonesia are divided into two, namely bank and non-bank financial institutions. Each of these financial institutions has two implementation systems, namely conventional and sharia. Sharia Financial Institutions (LKS) according to the National Sharia Council (DSN) are financial institutions that issue sharia financial products and have operational permits as sharia financial institutions.<sup>1</sup> This definition emphasizes that an LKS must fulfill two elements, namely the element of conformity with Islamic sharia and the element of legality of operations as a financial institution.<sup>2</sup>

The development of Islamic banks in Indonesia is growing very rapidly. In 2020, the Financial Services Authority (OJK) stated that the development of sharia banking businesses was accelerating. This is proven by the many sharia financial institutions that have emerged. According to records from the Financial Services Authority (OJK), in the banking sector there are currently 14 Sharia Commercial Banks (BUS), 20 Sharia Business Units (UUS) and 162 Sharia People's Financing Banks (BPRS). The financial assets of the sharia banking industry experienced a significant increase, in July 2020 the value of sharia banking financial assets reached Rp. 1,639.08 trillion, an increase of 20.61% year on year (yoy) with a market share of 9.68.<sup>3</sup>

Sharia banking in carrying out transactions uses a contract system that refers to the DSN MUI fatwa which is also in line with the provisions of article 1320 of the Civil Code<sup>4</sup>, including the *Murabahah Agreement* (sale and purchase carried out openly so that the buyer knows the profits obtained by the seller), *wadi'ah* (custody contract), *istisna'* (a contract with payment in installments and the goods are delivered at the end of the period according to the agreement), *wakalah* (represented contract), *qardh* (loan contract without any conditions), *Ijarah* (lease contract), *Ijarahmintahiyah bit tamlik* (lease contract with option of ownership of the object being contracted). *Murabahah* here is a buying and selling transaction in which the sharia bank acts as the seller and the customer as the buyer, with the selling price from the bank being the purchase price from the supplier plus a profit of a certain percentage for the sharia bank in accordance with the agreement. Ownership of the goods will transfer to the customer immediately after the sale and purchase agreement is signed and the customer will pay for the goods in fixed installments in the amount according to the agreement until full.<sup>5</sup>

*Murabahah* in the Qur'an is not directly discussed in detail, but there are a number of references to trade transactions such as buying and selling, profit and loss. Likewise, in the Hadith of the Prophet Muhammad SAW there is no direct discussion of *murabahah*. The early generation of scholars such as Imam Malik and Imam Syafi'i who specifically said that buying and selling *murabahah* was halal, did not support their opinion with a single Hadith.<sup>6</sup> In

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<sup>1</sup> Article 1 paragraph 9 National Sharia Council Fatwa No:04/DSN-MUI/IV/2000 concerning *Murabahah*

<sup>2</sup> Rizal Yaya, Aji Erlangga Martawireja, Ahim Abdurahim, *Akuntansi Perbankan Syariah Teori dan Praktik Kontemporer*, (Jakarta: Salemba Empat, 2014), 34.

<sup>3</sup> <https://keuangan.kontan.co.id/news/ojk-sebut-perkembangan-industri-perbankan-syariah-semakincepat-ini-alasannya> accessed October 12, 2023.

<sup>4</sup> Nury Khoiril Jamil and Rumawi, "Implikasi Asas Pacta Sunt Servanda Pada Keadaan Memaksa (Force Majeure) Dalam Hukum Perjanjian Indonesia", *Jurnal Kertha Semaya*, Vol. 8 No. 7, (2020): 1048

<sup>5</sup> Zainuddin Ali, *Hukum Perbankan Syariah*, (Jakarta: Sinar Grafika, 2007), 30.

<sup>6</sup> Muhammad, *Manajemen Pembiayaan Bank Syariah*, (Yogyakarta: AMP YKPN, 2005), 119.

Islam, *murabahah* is a form of trustful buying and selling. Trustworthy buying and selling can be interpreted as transparent buying and selling, that is, the seller has the obligation to tell the buyer honestly the cost price and profit taken from the goods being sold. Dishonesty in carrying out trustful buying and selling transactions, including carrying out actions in the form of mere silence, can be interpreted as fraud.<sup>7</sup>

The definition of *murabahah* above provides an explanation that the function of a sharia bank is as a seller of goods for the benefit of customers or consumers, by purchasing goods that the customer needs and then selling them back to the customer at a selling price equal to the purchase price plus the bank's profit. Banks must honestly report the cost of goods including the costs required and convey all matters relating to the purchase of goods to customers.

DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 explains that, if a bank or other financial institution wants to represent the purchase of goods to a customer from a third party, then the *murabahah* contract can only be entered into after the goods in principle become the property of the bank.<sup>8</sup> Some of the LKS that were used as material for analysis in this research were in PNM Mekaar Syariah West Aceh Branch, Bank BRI Syariah KCP Majayala, KSPPS Istiqamah Padang Panjang, Bank DKI Head Office, and Bank Mualamalat Indonesia Malang Branch.

Some of the analytical material above for both Sharia Banks and LKS is to determine the validity of the *Murabahah bil Wakalah contract* which is based on the fatwa issued by the DSN MUI regarding the *murabahah* contract. In the DSN fatwa No:04/DSN/MUI/IV/2000, namely regarding *murabahah*, it is stated that "the Bank will purchase goods required by the customer in the name of the Bank itself, provided that the transaction agreement must be free from usury." So it is necessary to analyze the contracts carried out by the LKS above and analyze the validity of the contracts carried out so that the contracts carried out are correct with the regulated sharia basis.

## Research Method

Based on the legal issues in this research, the type of research method used is normative legal research, namely research that emphasizes existing legal norms by conducting research on primary, secondary and tertiary legal materials through a library research process.<sup>9</sup> In this research, the type of approach used by the author is a statute approach which has an authoritative nature as the main basis for analyzing the legal issues being studied.<sup>10</sup> The second approach, which uses a conceptual approach, is carried out without departing from existing legal regulations, on the basis that there are no regulations that specifically regulate the topic of the problem being researched.<sup>11</sup>

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<sup>7</sup> Faisal, "Metode Anuitas Dan Proporsional Murabahah Sebagai Bentuk Transparansi Dan Publikasi Laporan Bank", *Mimbar Hukum* Volume 26, Nomor 3, October 2014. Quoted from Syamsul Anwar, *Studi Hukum Islam Kontemporer*, (Jakarta: RM Books, 2007), 168.

<sup>8</sup> Lia Murlisa, Annisa Mellani, "Rozatul Fitri dan Eli Aksiyah, Akad Murabahah Bil Wakalah Pada Pembiayaan Jual Beli di Koperasi Permodalan Nasional Madani Mekar Cabang Aceh Barat", *MAQASIDI*, Vol 2, No. 2, (2022): 83.

<sup>9</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tujuan Singkat*, (Jakarta: PT. Raja Grafindo Persada, 2003), 13.

<sup>10</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: PT Kharisma Putra Utama, 2017), 136.

<sup>11</sup> Dyah Ochterina Susanti and A'an Efendi, *Penelitian Hukum (Legal Research)*, (Jakarta: Sinar Grafika, 2014), 115.

## Results and Discussion

### Contracts in Sharia Financial Institution Financing

Sharia banking financing activities are very important activities to carry out because they are the main support for the LKS business unit to obtain income.<sup>12</sup> The success of a financing activity is marked by the creditor being able to return the loan principal and profit sharing within the specified time period so that the bank's business continues to progress. So the provision of financing must also be in the right amount, time and benefits.<sup>13</sup>

In sharia principles, financing is the provision of money from sharia financial institutions based on an agreement between the bank and another party who is obliged to repay the loan within a predetermined period of time using a profit-sharing system. The following types of financing include:

- a. Profit sharing financing ( *mudharabah, musyarakah* )
- b. Financing by buying and selling ( *murabahah, salam, istishna* )
- c. Financing is based on complementary principles ( *hiwalah, rahn, qard* )

In its distribution, sharia banks use various kinds of contracts such as:

1. Sale and Purchase Agreement
  - a. *Al Ba'i Naqdan* : Buying and selling which is usually done in cash. The handover of money and goods is carried out in person simultaneously.
  - b. *Al Ba'i Muajjal* : A sale and purchase in which the goods are handed over at the beginning, but payment is made later in installments or all at once.
  - c. *Murabahah* : Buying and selling carried out openly so that the buyer knows the profit the seller is getting.<sup>14</sup>
  - d. *Salam* : Buying and selling is carried out by paying at once at the beginning of the transaction, but the goods are delivered at the end of the agreed period.
  - e. *Istishna* : Buying and selling where payment is made in installments and the goods are delivered at the end of the agreed period.<sup>15</sup>
2. Rental Agreement
  - a. *Ijarah* : Rent – Renting to obtain benefits from goods or wages for workers without any change in ownership of the object agreed upon.<sup>16</sup>
  - b. *Ijarah Muntahiya Bit Tamlik (IMBT)* : Leasing to obtain benefits from goods and is followed by a change in ownership of the agreed object.<sup>17</sup>
3. *Natural Uncertainty Contract (NUC)*
  - a. *Musyarakah* : Etymologically, *Musyarakah* or *Shirkah* means *ikhtilath* (mixing), namely the mixing of one asset with another, so that the two cannot be distinguished.
  - b. *Mudharabah* : Is a mixture of capital with services (skills or expertise) Profits are divided based on the ratio (portion of profit sharing in percentage) that has been agreed upon. Losses are borne by the capital provider (*shahibul maal*), while those who distribute the services lose time and financial opportunities.<sup>18</sup>

<sup>12</sup> Faturrahman Djamil, *Penyelesaian Pembiayaan Bermasalah di Bank Syariah*, (Jakarta: Sinar Grafika, 2012), 59.

<sup>13</sup> Anjar Adrias Pitaloka, "Akad *Murabahah* Pada Bank Syariah", *At-taradhi Jurnal Studi Ekonomi*, Vol. 6 No.2, (2015): 123.

<sup>14</sup> Fatwa DSN MUI No. 04/DSN MUI/IV/2000 Concerning *Murabahah*

<sup>15</sup> Fatwa DSN MUI No. 05/DSN-MUI/IV/2000, Concerning *Istishna*

<sup>16</sup> Fatwa DSN MUI No. 09/DSNMUI/IV/2000, Concerning *Ijarah*

<sup>17</sup> Fatwa DSN MUI No. 27/DSN-MUI/III/2002, Concerning *Ijarah Muntahiya Bit Tamlik*

<sup>18</sup> Fatwa DSN MUI No. 07/DSN-MUI / IV/2000, About Financing *Mudharabah (Qiradh)*.

## The Concept of *Murabahah Bil Wakalah* Contract at Sharia Financial Institutions in Indonesia

In fiqh science, the *murabahah bil wakalah contract* was originally used for transactions with small children or with people who are less intelligent. This is done to prevent them from being cheated. However, nowadays, *murabahah bil wakalah contracts* are used in sharia banking practices. In fact, it is one of the most popular schemes in the banking world.<sup>19</sup> As per the fatwa of the National Sharia Council (DSN) of the Indonesian Ulema Council (MUI), the characteristics of *murabahah* financing are different from credit that occurs in conventional banking. For example, the selling price of credit to consumers in conventional banking uses an interest rate that depends on market conditions, whereas in *murabahah* financing, the *murabahah* margin or profit level (if an agreement has been made) is fixed, so the selling price cannot change.

In the practice of buying and selling *murabahah* implemented by sharia banking, not everything is done purely, because there are limited workforce and time in a Sharia financial institution, the purchase and procurement of goods can be delegated to the customer. The granting of power of attorney (*wakalah*) can generally be defined as an agreement in which someone delegates or hands over authority (power) to someone else to carry out an affair, and the other person accepts it, and carries it out for and on behalf of the person giving the power of attorney.<sup>20</sup>

*Murabahah bil wakalah* is buying and selling using the *wakalah* system. In this buying and selling system, the seller represents his purchase to the customer, thus the first contract is a *wakalah* contract after the *wakalah* contract ends which is marked by the delivery of goods from the customer to the Sharia Financial Institution, then the institution provides a *murabahah* contract.

In accordance with the provisions of the National Sharia Council Fatwa No: 04/DSN-MUI/IV/2000 article 1 paragraph 9: "if the bank wants to represent the customer to buy goods from a third party, the *murabahah* sale and purchase agreement must be carried out after the goods, in principle, become owned by the bank." In accordance with the provisions of the MUI DSN Fatwa, a *murabahah bil wakalah* contract can be entered into on the condition that if the goods purchased by the customer are fully owned by a sharia financial institution, then once the goods are owned by a sharia financial institution, the *murabahah* contract can be carried out. In buying and selling activities by representing the customer to choose the desired goods, the form of transaction is using the *wakalah* contract system. The bank will then ask for an invoice as proof of purchase of the goods.<sup>21</sup>

In the fatwa it is explained that in implementing the *murabahah contract* the bank is on behalf of the owner of the goods and the purchase is usury free. The pillars of *murabahah* financing are:<sup>22</sup>

- a. seller (*ba'i*)
- b. buyer (*mustary*)
- c. goods that are bought and sold (*mabi*)

<sup>19</sup> Adiwarman Karim, *Bank Islam: Analisis Fiqih dan Keuangan*, (Jakarta: IIT Indonesia, 2006), 113.

<sup>20</sup> Abdul Ghofur Anshori, *Penerapan Prinsip Syariah: Dalam Lembaga Keuangan, Lembaga Pembiayaan, dan Perusahaan Pembiayaan*, (Yogyakarta, Pustaka Pelajar, 2008), 163.

<sup>21</sup> Siska, *Sistem Perbankan Syariah Di Indonesia*, (Yogyakarta: Fajar Media Press, 2012), 305.

<sup>22</sup> Yenti Afrida "Analisis Pembiayaan Murabahah Di Perbankan Syariah", *JEBI (Jurnal Ekonomi dan Bisnis Islam)*, Vol. 1, No. 2, (2016): 160.



- d. selling price of goods (*tsaman*)
- e. the consent and qobul are stated in the contract

Murabaha financing conditions are:<sup>23</sup>

- a. Contracted sellers and buyers (must be legally competent and voluntarily without any coercion)
- b. Object of goods being traded (goods that are useful, not haram goods)
- c. Sighat the contract in ijab qabul
- d. Price of the goods being bought and sold (must not change during the agreement period and the payment term is mutually agreed upon)

There are provisions in the DSN MUI fatwa regarding *Murabahah bil Wakalah* which must be fulfilled in the contract, namely as follows:

- a. Customer: 1) The customer submits an application and promise to purchase an item or asset to the bank; 2) If the bank accepts the application, the bank must first purchase the assets that it legally ordered from the trader; 3) The bank then offers the asset to the customer and the customer must accept it in accordance with the agreed promise
- b. LKS: 1) The bank purchases goods that the customer needs on behalf of the bank itself, and this purchase must be legal and free of usury; 2) The bank then sells the goods to the customer (order) at a selling price equal to the purchase price plus profit.

Sharia Bank applies a profit margin to financing products based on *Natural Certainty Contracts* (NCC), namely business contracts that provide certainty of payment, both in terms of amount and time. Meanwhile, in NCC, both parties exchange the assets they own. Therefore, the object of exchange, whether goods or services, must be specified at the beginning of the contract with certainty in terms of Quantity, Quality, Price and delivery time. So these contracts sunnatullah offer a fixed and certain return such as murabahah, ijarah, ijarah, mutantia bit tamlik, salam, and isthisna' financing. Profit margin technically means a certain percentage that is determined per year to calculate profit margin on a daily basis.<sup>24</sup>

## Analysis of the Implementation of Contracts in Financing at Sharia Financial Institutions in Indonesia

The validity of the contracts carried out by LKS needs to be analyzed, especially for PNM Mekaar Syariah West Aceh Branch, Bank BRI Syariah KCP Majayala, KSPPS Istiqamah Padang Panjang, Bank DKI Head Office, and Bank Muallamat Indonesia Malang Branch with the following results:

### a. PNM Mekaar Syariah West Aceh Branch

The provision of financing carried out by PNM Mekar Syariah if seen from the harmony and conditions is fulfilled in terms of the seller (*ba'i*), buyer (*musytari*), and consent granted but there is a discrepancy in the object of the goods. The implementation of the murabahah contract has been regulated in the national sharia council fatwa no. 04/DSN-MUI/2000, regarding murabahah, the first part of the fourth point reads "that the bank purchases goods that the customer needs on behalf of the bank itself and the purchase of goods is free from usury".<sup>25</sup>

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<sup>23</sup> Yenti Afrida, op.cit, 160.

<sup>24</sup> Aulia Hanum, "Analisis Kesyarahan Akad Murabahah Bil Wakalah", Jurnal Ilmiah Mahasiswa FEB, 2015, 8-9.

<sup>25</sup> First part, item 4, Fatwa Dewan Syariah Nasional No. 04/DSN-MUI/2000

PNM Mekar Syariah also includes a wakalah agreement in its financing, where the bank provides capital for customers to buy goods or (represents) this is of course also not in accordance with what is regulated in the DSN fatwa above which states "the bank buys" the bank should make the purchase but in fact the bank never buys goods for customers.<sup>26</sup>

The inclusion of a wakalah contract can indeed be implemented in a murabahah contract, but according to the rules, purchasing goods by the representative only acts to purchase on behalf of the representative. So in principle the bank is the owner of the goods, but in practice PNM provides capital and the customer buys the goods in his own name. This is also not in accordance with Bank Indonesia regulations article 9 paragraph 1 point d PBI No.07/46/PBI/2005 dated 14 November 2005 which states that in the case of a bank representing a customer to purchase goods, the murabahah contract is executed after the goods become their property in principle bank.<sup>27</sup> So the murabahah and wakalah contracts must be executed separately and there is proof of receipt from the supplier of the goods as proof of the flow of funds provided by the bank. Meanwhile, in practice, receipts are only given by the PNM only for the first and second loans and thereafter the receipt is filled in by the PNM themselves without asking the customer on the pretext that there is no problem with payment.

The implementation of the murabahah contract carried out by the West Aceh branch of PNM Mekar Syariah, apart from being inconsistent with the MUI DSN Fatwa and PBI, also contradicts the consumer protection theory put forward in several literature. Mochtar Kusumaatmadja explains that consumer protection is "all the principles and legal rules that regulate relationships and problems between various parties and each other and relate to consumer goods or services in social life." And UUPK provisions emphasize that consumer protection is any effort that ensures legal certainty to provide protection to consumers.<sup>28</sup>

#### **b. Bank BRI Syariah KCP Majayala**

The procedure for implementing the murabahah bil wakalah contract on the Micro iB People's Business Credit (KUR) financing product at BRI Syariah KCP Majalaya goes through several stages, namely: Initial selection carried out by the Sales Officer, document checking and BI Checking process carried out and recommendations on the financing proposal carried out which is declared worthy of financing by the Unit Financing Officer (UFO), is given a decision on the financing proposal from the business by the Unit Head (UMS Head), is given a recommendation from the risk side and the risks from the risk party, namely by the Area Financing Officer (AFO), a financing decision is made, after that the contract is executed, and waiting for the disbursement process<sup>29</sup>

In its implementation, the bank enters into a murabahah contract simultaneously with the wakalah contract. In this case, the murabahah object or the object being traded is a collateral item from the customer and not an item needed by the customer. In other

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<sup>26</sup> Lia Murlisa, et al, op.cit, 89-90

<sup>27</sup> Article 9 paragraph 1 point d, Bank Indonesia Regulation Number: PBI No.07/46/PBI/2005

<sup>28</sup> Article 1 number 1 Law no. 8 of 1999 concerning Consumer Protection.

<sup>29</sup> Windi Maulidina Lestari dan Aliyudin, "Pelaksanaan Akad Murabahah Bil Wakalah Pada Produk Pembiayaan Kredit Usaha Rakyat (Kur) Mikro Ib Di Bank Bri Syariah KCP Majalaya", Jurnal Hukum Ekonomi Syariah, Volume VI/ Nomor 2/ Juli 2019, 185.

words, a murabahah contract occurs when the bank provides money and the customer provides collateral.<sup>30</sup> If seen from DSN fatwa no. 10/DSN-MUI/IV/2000 concerning wakalah and fatwa DSN No. 04/DSN-MUI/IV/2000 concerning murabahah, there is indeed a difference with the implementation of the murabahah contract that occurred at Bank BRI Syariah KCP Majalaya, because the murabahah contract is not carried out after the purchase of goods but is carried out at the beginning along with the wakalah contract. Therefore, the implementation of this murabahah contract is not fully in accordance with the fatwa because there are differences between the implementation and the DSN fatwa regarding murabahah in the first provision point 9.

**c. KSPPS Istiqamah Padang Panjang**

The implementation of murabahah bil wakalah financing procedures at KSPPS Istiqamah Padang Panjang is the same as financing procedures at other sharia financial institutions, but of course there are slight differences depending on the existing rules at other sharia financial institutions. The Istiqamah KSPPS is the same as the contents of the Regulation of the Minister of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia, Number 16 /Per/M.KUKM/IX/2015 article 21 which states that: Prospective cooperative members as intended in paragraph (1) letter b, in no later than 3 (three) months must become a member of the cooperative. If you want to make financing, you must become a member of a cooperative which will later be required to deposit mandatory savings, principal savings and term savings. These are the conditions for becoming a member at KSPPS Istiqamah Padang Panjang.<sup>31</sup>

At the time of signing the contract, here KSPPS Istiqamah is different from the existing rules. In the provisions of the National Sharia Council Fatwa No: 04/DSNMUI/IV/2000 article 1 paragraph 9: "if a bank wants to represent a customer to buy goods from a third party, the murabahah sale and purchase agreement must be carried out after the goods, in principle, become the property of the bank ". In other words, the granting of power of attorney (wakalah) from the bank to the customer or any third party must be carried out before the murabahah sale and purchase agreement takes place. In reality, the murabahah contract often precedes the granting of wakalah. At KSPPS Istiqamah, the first contract to be carried out is the murabahah contract, followed by the wakalah contract.<sup>32</sup>

If we compare it with existing theory, it should refer to the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). The following are the sharia provisions for the use of the wakalah contract in muamalah. DSN fatwa number: 04/DSN-MUI/IV/2000 dated 1 April 2000 concerning murabahah in the first provision, paragraph nine, states: "If the bank wishes to represent the customer to purchase goods from a third party, the murabahah sale and purchase agreement must be executed after the goods are in principle belongs to the bank".<sup>33</sup>

**d. Bank DKI Head Office**

Murabahah at UUS Bank DKI Syariah is a murabahah pattern that uses the Murabahah Mu'allaq (Murabahah lil Amir bi al-Syira') pattern, namely a sale and

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<sup>30</sup> *Ibid*, 187.

<sup>31</sup> Anisa Ahmad, "Pelaksanaan Pembiayaan Murabahah Bil Wakalah Pada Kspps Istiqamah Padang Panjang", (Thesis: IAIN Batusangkar, 2018), 76-77.

<sup>32</sup> *Ibid*, 77.

<sup>33</sup> *Ibid*, 77-78.



purchase contract carried out on the basis of an order from the prospective buyer. UUS PT. Bank DKI uses this contract in their products for several reasons, namely for simplification and efficiency and also on a legal basis it refers to the OJK book, namely the Murabahah Sharia Banking Prodak Standard Book, where in the book it is explained that "in the event that the parties wish to carry out a Murabahah financing agreement before The customer carries out his wakalah duties, then the Murabahah contract becomes effective after carrying out his wakalah duties (muallaq). This can only be done when the Murabahah object requires time to obtain and a time period must be determined".<sup>34</sup> Meanwhile, for the term of UUS PT. Bank DKI refers to DSN-MUI Fatwa No. 119 where in the fatwa it is explained that in the implementation of the Mu'allaq contract the customer is obliged to report the implementation of the Wakalah Agreement along with relevant evidence in accordance with 'urf no later than 15 days after implementation.<sup>35</sup>

Murabahah contract practices implemented in the Sharia Business Unit of PT. Sharia Business Unit PT. Bank DKI can be said to be quite easy to implement because customers only need to submit a financing application accompanied by a clear financing objective which will be carried out, in other words customers who apply for financing are required to have a clear business and be able to complete Murabahah transactions until the end of the financing period.<sup>36</sup> Based on the provisions of DSN-MUI Fatwa No. 4 of 2000, the implementation of the murabahah contract implemented in the Sharia Business Unit of PT. Bank DKI does not require the provider (al-Bai') to own the goods that are the object of the murabahah contract first.<sup>37</sup> Thus, the implementation of the murabahah bil wakalah contract implemented by the Sharia Business Unit of PT. Bank DKI can be said to be in accordance with the provisions stipulated by DSN-MUI Fatwa No. 119 of 2018.<sup>38</sup>

**e. Bank Muamalat Indonesia Malang Branch**

In theory, a murabahah bil wakalah contract can be said to be sharia if you carry out a wakalah contract first and then carry out a murabahah contract, after the goods in question have become the property of the bank. However, from the research results, it can be concluded that the implementation of murabahah financing carried out by Bank Muamalat Indonesia is using a murabahah bil wakalah contract, although here the wakalah contract itself is only carried out internally, namely between the bank and the customer or what is usually called a private contract, meaning This wakalah contract is not notarized.<sup>39</sup>

Based on the Al-Qur'an verse Al-Baqarah verse 275, Allah says that every murabahah transaction must be free from usury, including goods traded in murabahah must also be halal goods. Apart from the Al-Qur'an verse above, the conditions

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<sup>34</sup> Sharia Banking Department Financial Services Authority, Pedoman Produk Perbankan Syariah Murabahah, 32.

<sup>35</sup> Fatwa DSN-MUI No. 119 Tahun 2018 tentang Ultra Micro Payment (al-Hajah alMutanahiyat al-Sughra) Based on Sharia Principles.

<sup>36</sup> Fazlu Dziky Fatan Syauqi, Akad Wakalah Dalam Pembiayaan Murabahah Di Perbankan Syariah Ditinjau Dari Fatwa Dsn-Mui (Studi Kasus Unit Usaha Syariah PT. Bank DKI Kantor Pusat), (Thesis: UIN Syarif Hidayatullah, 2022), 67

<sup>37</sup> Ibid, 68-69.

<sup>38</sup> Ibid, 71.

<sup>39</sup> Ainun Hanum, op.cit, 10.

regarding goods being bought and sold can also be seen from the provisions based on DSN Fatwa No.04/DSN-MUI/IV/2000 which states that goods being bought and sold are not prohibited goods. This is a sharia theory that Sharia Commercial Banks must comply with. And it turns out that in practice Bank Muamalat Indonesia applies what is ordered by the Al-Qur'an and the DSN Fatwa, because in practice Bank Muamalat Indonesia only finances halal financing, both substances and non-substances.<sup>40</sup>

In theory, from DSN Fatwa No.23/DSN-MUI/III/2002 concerning repayment discounts in murabahah, DSN decides the provisions, namely, 1) If the customer in a murabahah transaction makes payment in full on time or faster than the agreed time, LKS may provide a deduction from the payment obligation, provided that it is not agreed in the contract; 2) The amount of the deduction as intended above is left to the policies and considerations of the LKS. Bank Muamalat Indonesia in terms of penalties and discounts, the application is that the bank does not apply any penalties, but in terms of discounts, the application is there, although it is only discussed because Bank Muamalat Indonesia has the principle that discounts are permitted, but the nominal amount cannot be agreed upon and cannot be entered into.<sup>41</sup>

It can be concluded that Bank Muamalat Indonesia Malang Branch, which in practice is closer to the rules required by sharia, for example in terms of requiring a wakalah agreement, the bank applies it even though it is done privately, meaning it is not notarized, apart from that, in terms of penalties and discounts it is also applied. The bank did what was taught in theory, namely that the bank did not apply penalties and applied discounts, but the amounts were not agreed upon.

From the explanation above, the financing activities carried out by several LKS are still inconsistent with sharia principles and also UUPK provisions and are not in line with the Consumer Protection theory put forward by Mochtar Kusumaatmadja. In his theory, Mochtar states that it is "related to goods and services", and PNM is a provider of goods and services for consumers, so it must comply with existing regulations so that legal certainty for consumers can be fulfilled in accordance with the mandate of the UUPK.

To make it easier to understand, if we explain it in a table, the discrepancies that occur are as follows:

Type of Contract	Theory	Practice
Murabahah Agreement	LKS buys goods proposed by capital borrowers until the goods are legally written that ownership is with LKS .	Some LKS provide capital in the form of money which is then given to capital borrowers and invited to be spent to fulfill business capital. The goods are written as belonging to the capital borrower himself (not LKS )

<sup>40</sup> *Ibid*, 11

<sup>41</sup> *Ibid*, 17.

Wakalah Agreement	LKS is the representative of the capital borrower to purchase the capital borrower's needs.	LKS is not a representative because LKS directly provides business capital in the form of money given to capital borrowers.

## Conclusion

The concept of financing in sharia is important to remain appropriate in practice. More than just a matter of obedience, but also to avoid other problems because existing provisions have been violated. It is important that the terms and conditions of buying and selling are fulfilled properly so that the transaction is valid. Meanwhile, in this research, the discussion of LKS that used the *murabahah bil wakalah agreement* found that there were several LKS that were not appropriate. The process of purchasing goods to representatives is still not in accordance with sharia provisions. The practice that should be carried out is that the purchase of goods must be purely purchased and become the legal property of the bank or LKS, and in this purchasing process the LKS also becomes the representative of the customer or capital borrower. Only then is it resold to customers at the agreed price (cost price plus profit sharing price) and done transparently. And ends with an agreement regarding payment made in installments over a predetermined period of time.

As for the practices carried out by some LKS are Firstly, LKS provided financing for the purchase of goods, but LKS actually provided the money according to the loan application submitted. Second, the application of the wakalah contract is *also* felt to be inappropriate, thus eliminating the function of the *wakalah contract* itself. Third, it is a suggestion from the researcher that if seen in this case, it is more appropriate to use the *mudharabah* or *musarakah* contract for business capital financing. Because these two contracts are actually more appropriate if used in providing business capital loans.

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