AL-MUDHARABAH: Jurnal Ekonomi dan Keuangan Syariah
Vol.4 No.1, June 2023
P-ISSN: 2655-0547 E-ISSN: 2829-3665
DOI: https://doi.org/10.22373/al-mudharabah.v4i1.3049

ANALYSIS OF JUDGE'S DECISION NO. 319/PDT.G/2017 ON DEFAULT LAWSUIT ON MURABAHAH BI AL-WAKALAH CONTRACT

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Abstract

The implementation of murabahah bi al-wakalah conducted by BRI Syariah bank branch Banda Aceh has caused disputes because the customers did not fully accept the representation for the house purchase that had been delegated in the financing contract. This has led to conflicts between the bank, customers, and developers. The aim of this thesis research is to examine the opinion of the Sharia Court of Banda Aceh City in decision No.319/Pdt.G/2017, which rejected the plaintiff's lawsuit and also dismissed the defendant's exception, and to analyse the judge's considerations in the default lawsuit on murabahah bi al-wakalah financing at BRI Syariah KCP Banda Aceh. To obtain objective and valid data, the author used a research design with a normative juridical approach, qualitative research type (qualitative research), exclusively (content analysis), and data collection techniques through documentation. The results of the author's research are that in the trial process, the panel of judges of the Sharia Court of Banda Aceh City rejected the defendant's lawsuit because it was not proven that the defendant had committed default and explicitly rejected all of the plaintiff's claims, stating that the murabahah bi al-wakalah financing agreement had been fully implemented by the defendant and everything was in accordance with the agreement contained in the contract. However, in this decision, there is a part that was not disclosed, especially regarding the defendant's reason for directly disbursing the second stage of financing to the developer, which should have been based on the second-stage disbursement agreement and still had to be carried out by the debtor customer. Thus, the decision made by the panel of judges needs to be reviewed, especially to reveal the fact of the second-stage fund transfer directly to the developer before the house ordered by the debtor customer was completed and handed over to the plaintiff.

Keywords: Judge's decision, default, Contract execution.

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Abstrak

Penerapan murabahah bi al-wakalah yang dilakukan oleh bank BRI Syariah cabang Banda Aceh telah menimbulkan persengketaan disebabkan pihak nasabah tidak menerima sepenuhnya perwakilan untuk pembelian rumah yang telah diwakalahkan pada akad pembiayaan. Hal tersebut telah menimbulkan konflik antara pihak bank, nasabah dan developer terjadi permasalahan. Adapun tujuan penelitian skripsi ini yaitu untuk meneliti pendapat hakim Mahkamah Syar'iyah Kota Banda Aceh putusan No.319/Pdt.G/2017 dalam menolak gugatan pengggugat dan juga menolak eksepsi tergugat, serta menganalisis pertimbangan hakim dalam gugatan wanprestasi pada pembiayaan murabahah bi al-wakalah pada BRI Syariah KCP Banda Aceh. Untuk mendapatkan data yang objektif serta valid, penulis menggunakan desain penelitian dengan pendekatan yuridis normatif, jenis penelitiannya kualitatif (qualitative research), secara eksklusif (content analysis) dan teknik pengumpulan data melalui dokumentasi. Hasil dari penelitian penulis yaitu pada proses persidangan majelis hakim Mahkamah Syar'iyah Kota Banda Aceh menolak gugatan tergugat disebabkan tidak terbukti pihak tergugat melakukan wanprestasi dan secara tegas menolak seluruh tuntutan pihak penggugat atas perjanjian pembiayaan murabahah bi al-wakalah telah dilaksanakan sepenuhnya oleh pihak tergugat, dan seluruhnya sesuai dengan kesepakatan yang dimuat dalam perjanjian tersebut. Namun dalam putusan ini ada bagian yang tidak terungkap terutama pada alasan pihak tergugat yang secara langsung telah menyalurkan pembiayaan tahap kedua kepada pihak developer seharusnya berdasarkan akad perjanjian pencairan tahap kedua tersebut tetap harus dilakukan pihak nasabah debitur. Dengan demikian putusan yang dibuat majelis hakim ini masih perlu ditinjau ulang terutama mengungkap fakta terjadinya pentransferan dana tahap kedua langsung kepada pihak developer sebelum rumah yang diorder nasabah debitur selesai dibangun dan diserahkan kepada pihak penggugat.

Kata Kunci: Putusan hakim, wanprestasi, Pelaksanaan kontrak.

INTRODUCTION

In the operation of Islamic banks, bank management must be guided by the rules for the implementation of bank financing stipulated by Law No. 10 of 2008 as a formal juridical provision set by the government, which is described in detail in the provisions of bank capacity assessment by Bank Indonesia, which has now been handed over to the Financial Services Authority (OJK) based on Law No. 21 of 2011 concerning the Financial Services Authority to conduct assessments, supervision and evaluation and also DSN (National Sharia Council) fatwas.

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To overcome problematic financing carried out by its debtor customers, the management of Islamic banks must take various strategic steps such as giving warnings to the restructuring of murabaha financing in Islamic banks carried out by means of several stages such as *rescheduling*, *reconditioning*, and *restructuring*, which are strategic steps and efforts to overcome various acts of default committed by customers who deliberately ignore their obligations to banks, so that of course this will potentially harm banks that have a function as financial intermediary institutions. [1]

In principle, financing restructuring is carried out by the bank to minimise potential losses due to customers experiencing difficulties in paying loan principal and other obligations to the bank, but on condition that the debtor customer still has good business prospects and is considered capable of fulfilling obligations after the financing is restructured. This financing restructuring will be a strategic step to help debtor customers fulfil and settle their obligations, so that the customer's business activities or financing can run again as usual, so that the customer is able to pay his obligations and the risk of Syariah bank losses can be avoided. Although in reality the bank is still faced with various problems caused by its customers, causing the bank to take steps to force the seizure of collateral submitted by debtor customers as a condition for obtaining financing and has been bound by an authentic deed for *preferential* control of collateral for the bank.[2]

When the bank is unable to overcome the customer's behaviour by using the 3R pattern above, the collateral execution step is something that the bank is forced to do, as a last resort to cover its losses caused by the default of its debtor customers. This is what causes Islamic banks to carry out legal actions in the form of controlling the collateral of their debtor customers to cover all losses suffered by the bank along with other obligations for Islamic banks that have channeled financing.

In this case there was a problem of default on *murabahah bi al-wakalah* financing, namely the customer sued the Banda Aceh branch of BRI Syariah, this was due to the inconsistency of BRI Syariah with the standard contract that had been made. In this case the customer applied for restructuring of the financing he had received for purchases in Gampong Santan, Ingin Jaya District, Aceh Besar Regency. Furthermore, the customer submitted a

[1] Siti Faridah Abd Jabbar, "Sharia-Compliant Financial Instrument: Principles and Practice", *Company Lawyer, Comp. Law* 30 (6), 176-188, 2009, page. 179.

[2] Siti Faridah Abd Jabbar, "Sharia-Compliant Financial Instrument: Principles and Practice", *Company Lawyer, Comp. Law* 30 (6), 176-188, 2009, page. 179.

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financing application with a value of Rp 350 million and then the bank sold the house to its customers at a price of Rp 500 million.

In the financing plan, the bank will disburse two stages, but in its realisation the customer only obtained funds for the purchase of a house using a murabahah bi al-wakalah contract of Rp 90 million. In the second stage of financing disbursement, the debtor customer could only complete the roofing so that the house could not be occupied, while the rest was transferred by BRI Syariah as the defendant to the account of PT Berkah Sejahtera (developer) without the consent of the plaintiff in the amount of Rp 254 million, and the transfer was beyond the consent of the plaintiff, so that even though the defendant had handed over the funds to the developer, the developer did not complete the building properly.[3]

As a result of the plaintiff's actions in paying all of his funds to the developer, the plaintiff had no control over the construction of the housing that he had ordered.[4] As a result, even though the bank had paid the full price of the house, in reality the plaintiff could not live in the house he had bought, and the plaintiff had to build the roof of the house at his own expense because the developer did not carry out the agreement to build the house as it should.

The facts submitted by the plaintiff that the defendant had submitted the sale of the house by auction to the KPKNL because the plaintiff did not pay off the purchase price of the house to the bank, so that the negligence of the customer resulted in losses for the bank, so that the bank had to sell the house and the proceeds were to cover the costs incurred by BRI Syariah bank.

In this case, the plaintiff submitted to the board of judges to decide this case in litigation for default committed by the defendant because it violated the principles of the murabahah bi wakalah contract that had been agreed upon when the contract was made in the form of a mandate to give assignments to buy the house needed by the plaintiff by handing over money, but in its realisation only Rp. 90 million was transferred directly to the plaintiff's account, while the remaining Rp. 254,000,000 was transferred

[3] Decision Number 319/Pdt.G/2017/MS,Bna

[4] Chairul Fahmi, Yusrizal, and Niswanto, "Supervisors Facilitate Principals Teachers in Creating Student Achievements," in *Proceedings of the 4th International Conference on Research of Educational Administration and Management (ICREAM 2020)*, vol. 526, 2021, https://doi.org/10.2991/assehr.k.210212.048.

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directly to the developer's account. Meanwhile, the developer did not complete the building of the house purchased by the customer.[5]

This problem has been mediated but reached a dead end so that the litigation process is still carried out for case settlement. So based on the facts at the trial, the judge rejected the plaintiff's claim with the consideration that the defendant did not make a default, the plaintiff's action transferred the remaining payment funds directly to the developer in accordance with the agreement stated in Article 6 of the wakalah contract on the purchase of goods No. 17-KC-BDA/FS/WAK/04/2013. So that in the absence of evidence about the default, the other lawsuit from the assessor was also rejected by the judge.[6]

Based on the discussion of the background of the problem above, the researcher is interested in conducting this research and further examining a writing with the title "Analysis of Judge's Decision No. 319/Pdt.G/2017 on Default Lawsuit for the Implementation of Murabahah Bi Al-Wakalah Contract in the Syar'iyah Court of Banda Aceh City".

RESEARCH METHODS

In this study the authors used a normative juridical approach to library legal research or secondary data only for the settlement of defaults in murabahah bi al-wakalah financing carried out by BRI Syariah banks with their debtor customers and the auction of collateral objects, but the plaintiff's lawsuit was rejected in its entirety and the defendant's exception was also rejected by the Judge of the Syar'iyah Court of Banda Aceh City with decision No.319/Pdt.G/2017.

This research is based on secondary data consisting of collecting, analysing, in general, exclusively this research is *content* analysis, namely analysing the content of texts either from journals, books, or from judges' decisions.[7] Content analysis in this study is used to discuss and describe the contents of decisions made by judges, in cases of default by debtor customers at BRI Syariah so that the decision can be known for its truth and

[5] Chairul Fahmi, "The Application of International Cultural Rights in Protecting Indigenous Peoples' Land Property in Indonesia," *Https://Doi.Org/10.1177/11771801241235261* 20, no. 1 (March 8, 2024): 157–66, https://doi.org/10.1177/11771801241235261.

[6] Analysis of Decision Number 319/Pdt.G/2017/MS, Bna.

[7] Muhammad Siddiq Armia, *PENENTUAN METODE & PENDEKATAN PENELITIAN HUKUM*, ed. Chairul Fahmi (Banda Aceh: Lembaga Kajian Konstitusi Indonesia, 2022).

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justice, especially from the contents of the text of legal decisions relating to the case of auctioning collateral objects

RESULTS AND DISCUSSION

Basic Concept of Murabahah Bil-Wakalah in Fiqh Muamalah

1. Definition of *Murābaḥah* Akad

The *murabahah bi al-wakalah* contract is a combination of two contracts, namely *murabahah* and *wakalah*. These two contracts are in principle two different contracts, but are combined to create a new contract that suits certain needs. *Murabahah* is linguistically derived from the word *rabiha-yarbahu-ribahan- warabahan-warabahan* which is interpreted as lucky or giving profit. While the word *ribh* is an advantage that can be taken from production or capital (*profit*). Murabahah is taken from the word *mashdar* which means profit, gain, or benefit.[8]

In terms of fiqh, *murabahah* is a certain form of sale and purchase in which the seller states the cost of the goods, including the price of the goods and other costs to be incurred in obtaining the goods and the desired rate of profit or profit.[9] Wahbah Al-Zuhailiy argues that *murabahah* is a sale and purchase made by someone at the initial price plus profit. The seller conveys the purchase price to the buyer plus the seller's desired profit request to the buyer. [10]

In the Compilation of Sharia Economic Law (KHES) Article 20 paragraph 6 formulates *murabahah* as mutually beneficial financing carried out by *shahib al-mal* (the party who has funds) to parties in need through sale and purchase transactions and with an explanation that the procurement price of goods and the selling price has an excess value which becomes profit or profit for shahib al-mal and the repayment is made in cash or credit.[11]

So, *murabahah* is a sale and purchase contract made to someone where the seller conveys the purchase price to the buyer and the profit taken is commensurate with the agreement between the two parties. Thus the Islamic Financial Institution as a seller and the customer as a buyer, the

[8] Yadi Janwari, *Islamic Financial Institutions*, (Bandung: PT Remaja Rosdakarya Offset, 2015), page.14.

[9] Ascarya, *Islamic Bank Agreements & Products*, (Jakarta: PT Raja Grafindo Indonesia, 2008), page. 81-82

[10] Yazid Afandi, *Fiqh Muamalah and its Implementation in Islamic Financial Institutions,* (Yogyakarta: Logung Pustaka, 2009), page. 85

[11] Imam Mustofa, *Contemporary Fiqh Muamalah*, (Lampung: STAIN Jurai Siwo Metro 2014), page. 57.

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Islamic Financial Institution provides the goods needed by the customer and will be paid back by the customer along with the *margin* (profit) agreed by both parties between the bank and the customer with a predetermined period of time.[12]

Meanwhile, wakalah is taken from the *wazan* word *wakalah-yakilu-waklan* which means handing over or representing affairs while wakalah is the work of a representative.[13] *Wakalah* is defined as the handover of something by someone who is able to carry out part of something that can be replaced, to another person, so that the person carries out as it should.[14]

The *proxy* may receive a fee (*al-ujur*) and may not receive a fee (expecting only the pleasure of Allah / helping). However, if there is a fee or commission, the contract is like an ijarah / rental contract. *Wakalah* with reward is called *wakalah bil- ujrah,* which is binding and cannot be cancelled unilaterally.[15]

According to the Shafi'iyah, the meaning of *wakalah* is the expression or transfer of power (*al-muwakkil*) to another person (*al-wakil*) to carry out something of the type of work that can be replaced and can be done by the authoriser, provided that the work is carried out while the authoriser is still alive. Wakalah in the literal sense is guarding, holding back or the application of expertise or repair on behalf of another person.[16]

The Compilation of Sharia Economic Law (KHES) Article 20 paragraph 19 defines wakalah as the granting of power to another party to do something. Power in this context is the power to carry out obligations and also the power to receive rights.[17]

So, it can be understood that *wakalah* is a contract that gives power to another party to carry out an activity where the authorising party is not in a position to carry out the activity. A *wakalah* contract is essentially a contract used by a person when he needs someone else or does something that he cannot do himself and asks someone else to do it. The scholars of the madhhabs differed on what costs could be charged to the selling price of the goods. For example: Hanafi scholars allow costs that are generally

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[12] Binti Nur Asiyah, *Islamic Bank Financing Management*, (Yogyakarta: Teras, 2014), p. 224. 224

[13] Ahmad Warson Munawwir, Arabic-Indonesian Dictionary, (Surabaya: Progressive Library 1997), page. 1579.

[14] Abu Bakar Muhammad, *Fiqh Islam*, (Surabaya: Karya Abditama, 1995), page. 163.

[15] Sri Nurhayati-Wasilah, *Sharia Accounting in Indonesia*, (Jakarta: Salemba Empat, 2014), page. 254.

[16] Helmi Karim, *Fiqh Muamalah*, (Jakarta: Raja Grafindo Persada, 2002), p. 20

[17] Imam Mustofa, *Contemporary Mu'amalah Fiqh*, (Lampung: STAIN Jurai Siwo Metro, 2014), p. 176.

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incurred in a sale and purchase transaction, but they do not allow costs that should be done by the seller.[18]

The Maliki scholars allow costs that are directly related to the sale transaction and costs that are not directly related to the transaction but add value or profit to the goods. The scholars of the Shafi'i madhhab allow costs that are generally incurred in a sale and purchase transaction except for the cost of labour itself because this component is included in the profit. Similarly, costs that do not add value to the goods should not be included in the cost component. Hambali scholars are of the opinion that all direct and indirect costs may be charged to the selling price as long as they are payable to a third party and will add value to the goods being sold.[19]

In summary, it can be stated that all four madhhabs allow the charging of direct costs that must be paid to a third party. The majority of scholars agree that it is not permissible to charge direct costs related to work that is indeed a direct cost related to useful things, and it is permissible to charge indirect costs that are paid by a third party and the work must be done by the third party. If the work has to be done by the seller, the Maliki madhhab does not allow it, while the other three madhhabs do. The four madhhabs are unanimously agreed that it is not permissible to charge indirect costs if they add value to the goods or are not related to anything useful.[20]

2. Legal Basis of Murabahah Bil

Buying and selling using the *murabaha* system is a permissible sale and purchase contract, and is found in the Qur'an and Hadith. The word of Allah that allows the practice of *murabaha* sale and purchase contracts is the Qur'an Surah Al-Baqarah verse 275.

> It means that *those who eat or take usury cannot stand but as one possessed by a demon because of insanity. That is because they say that buying and selling is the same as usury, whereas Allah has made buying and selling lawful and usury unlawful.*

In the verse above, it can be understood that Allah SWT confirms the validity of buying and selling in general, and rejects and prohibits the concept of usury. Therefore, murabahah transactions gain recognition and

[18] Adiwarman Karim, *Islamic Banking Fiqh and Financial Analysis*, (Jakarta: PT Raja Grafindo, 2010), p. 144.
[19] *Ibid*,
[20] *Ibid*,

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validity from Sharia, and are legal (halal) if operationalised in explaining Islamic Bank financing considering that murabahah is a type of sale and purchase transaction and does not contain a usury component.

The hadith that allows the practice of usury is as follows which means "*The Prophet SAW said: There are three things that contain blessings: buying and selling not in cash, muqaradhah (murabahah), and mixing wheat with barley for household use, not for sale.*" *(Ibn Majah from Shuhaib).*

The hadith above explains the requirements in the murabaha sale and purchase contract are needed to make an agreement between the two parties, so that there is willingness and desire of each party in carrying out the transaction. All provisions in this murabaha sale and purchase, including in determining the price, determining the desired margin, payment method and others, require agreement and mutual consent of each party, both customers as buyers and Sharia Financial Institutions as sellers. Therefore, this transaction cannot be made in a unilateral manner.

3. Principles of Forming Murabahah Bi Al-Wakalah Agreement as Al-Uqud Al-Mubarakkah

Murabahah bi al-wakalah is one type of contract in the Islamic financial system that is often used in buying and selling transactions with a clear profit scheme. Munawar Iqbal stated that most of the contracts made by parties in modern times are hybrid contracts, namely contracts in which there is more than one contract. Therefore, it is very important to clarify the principles related to the combination of these contracts. Because it is very possible that a contract that is basically a valid contract on its own becomes a prohibited contract if it is combined.[21]

As explained above, what is disputed by scholars in the merger of contracts is not the validity of the merger of contracts as long as the resulting contract does not conflict with the basic principles of contracts in Islam. Munawar Iqbal explains that the preparation of multi-contracts must refer to the following 4 basic principles:[22]

a. The combination of contracts/multi contracts must not contradict the text, if there are texts / texts of the Qur'an and Hadith that clearly prohibit certain contracts from being combined. Then for whatever

[21] Wahyu Akbar et al., "Optimization of Sharia Banking Regulations in Developing the Halal Cosmetic Industry in Indonesia," *Jurnal Ilmiah Al-Syir'ah* 22, no. 1 (June 30, 2024): 1–12, https://doi.org/10.30984/JIS.V22I1.2611.

[22] Munawar Iqbal, "*Islamic Finance: An Attractive new way of Financial Intermediation*," International Journal of Banking and Finance, Vol. 10: Iss. 2, Article 4. Available at: http://epublications.bond.edu.au/ijbf/vol10/iss2/4, p. 25

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reason the contracts cannot be combined. If a product/contract provides contracts that cannot be combined, then the combination of contracts is not acceptable.

b. A combination contract must not be intended to circumvent an impermissibility or attempt to avoid what is prohibited, which is called hiyal or helah syar'iyyah (legal artifices), or to circumvent the law, which is an unjustified act.
c. The combination of certain contracts must not result in conflicting conditions or requirements. Each type of contract has certain legal implications or different legal consequences, so if the contracts contradict each other (have conflicting legal implications), they cannot be combined. Conversely, if the legal consequences of each contract do not contradict each other, it means that there is no problem if the contracts are combined.
d. The amalgamation of contracts must not result in conditions/ contracts that are dependent on each other. If the amalgamation of contracts results in the execution of a contract that is dependent on another contract, then the amalgamation cannot be justified.[23]

4. Fuqaha's Opinions on the Formation of Al-Murakkabah Bi Al-Wakalah Agreements and Their Implementation

Here are some examples of endorsements against combining two contract among the scholars of the madhhab:

a. Hanafis: It is permissible to combine a sale and purchase contract with ijarah (rental) based on the concept of istihsan. Istihsan is abandoning a general proposition (kully) and implementing an ishtishna'i proposition (exception/specific proposition). This concept of istihsan is similar to qiyas khafi in the Shafi'i school of thought.
b. Maalikis: It is permissible to combine several contracts in one contract based on the principle that if the Shari'ah permits independent contracts, then it is also permissible to combine them. But it is not a combination of contracts that have different rulings, such as between buying and selling, sharf, musaqah, shirkah, qiradh, or marriage.

[23] Nevi Hasnita, The *Concept of MultiAkad (Hybrid Contract) in the Study of Contemporary Muamalah Jurisprudence*, (Banda Aceh: Percetakan Bandar di Lamgugop, 2021), p. 58-61

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c. Shafi'iyah: It is permissible to combine sale and purchase and ijarah, as well as salam and ijarah.
d. Hambali scholars: It is permissible to combine qardh (debt and credit) and wakalah in one contract.[24]

The implementation of the formation of *akad al-uqud murakkabah bi al-wakalah* (complex transaction contract with wakalah) in Islamic finance practice involves several important steps as follows: determination of roles and authorities, agreement on the object of sale and purchase, Determination of price and profit, appointment of a representative (*muwakkil*), Determination of the validity period of the contract, implementation of the transaction, payment and delivery, transparency reporting, responsibility and risk.[25]

In implementing akad *al-uqud murakkabah bi al-wakalah*, it is important to maintain sharia principles, such as the prohibition of usury, uncertainty (*gharar*), and other haram elements. Transparency and understanding from all parties involved are the keys to success in implementing this contract in accordance with sharia principles.

5. Benefits of Akad Murabahah Bi al-Wakalah in Banking Transactions and its Consequences for the Parties.

In the most important thing *murabahah* is a process of buying and selling goods when the initial price and profit are known and agreed by both parties. In Islamic banking, the murabahah contract is the type of contract most often used for the purchase of products by banks according to customer requests and then resold to these customers at a higher price to obtain a pre-agreed bank profit.

1. For banks:
   a. Being one form of fund distribution.
   b. Achieving revenue in the form of margin (profit).
2. For customers
   a. Namely, it is one of the alternatives to obtain certain goods through financing from banks.

[24] Asra Febriani, *Hybrid Contract from the Perspective of Sharia Economic Law*, 2021, p. 322.

[25] Muhammad Achyar, Chairul Fahmi, and Riadhus Sholihin, "ISLAMIC LAW REVIEW OF MONOPOLY PRACTICES IN MODERN ECONOMICS," *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 5, no. 2 (December 30, 2024): 288–308, https://doi.org/10.22373/AL-MUDHARABAH.V5I2.6545.

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b. You can pay in instalments with an amount that will not change during the agreement period.[26]

In a *murabahah bi al-wakalah* banking transaction, there are several consequences that must be considered by the parties involved, including:

1. Consequences for the Bank (Representative) The bank acts as a representative or agent in this transaction. Therefore, the bank is responsible for finding and purchasing the goods or assets requested by the customers with their requests and needs. The bank must carry out the sale and purchase transaction *(murabahah)* with the customer in accordance with the purchase and additional (profit) previously agreed upon. The bank must also clearly explain the details of the price and profit to the customer. The bank must carry out its role as a representative in good faith and honesty in managing customer funds and conducting transactions on their behalf.
2. Consequences for the Customer The customer is the owner of the funds in a murabahah *bi al-wakalah* transaction. They provide funds to the bank to purchase the goods or assets requested. The customer must pay the purchase price of the goods or assets that have been determined by the bank, including additional (profit) in exchange for representative services performed by the bank. Customers have the right to know clearly about the details of the price and profit set by the bank. They also have the right to ensure that the transaction is carried out in accordance with sharia principles and does not involve elements of usury (interest) or things that are haram.
3. Consequences for Third Parties (Seller/Supplier) In murabahah bi al-wakalah transactions, the third party acts as a seller/supplier of goods or assets requested by the customer in accordance with the agreement and the predetermined price.

It is understood that the *murabahah bi al-wakalah* contract provides an Islamic-based financing alternative that can be beneficial to the parties involved. However, transparent agreement, responsibility, and adherence to sharia principles are key to the success and sustainability of this contract in Islamic banking transactions.

[26] Muhamad, *Fund Management of Islamic Banks*, (Jakarta: Raja Grafindo, 2015), p. 47.

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P-ISSN: 2655-0547 E-ISSN: 2829-3665
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Analysis of Judge's Decision No. 319/Pdt.G/2017 on Default Lawsuit for the Implementation of Murabahah Bi Al-Wakalah Contract in the Syar'iyah Court of Banda Aceh City

Based on the plaintiff's claim and also the trial process in the form of replication and duplicates, and all the facts of the trial, the panel of judges made several considerations of the case. As for the judge's considerations that have important meaning in the settlement of cases that occur, the considerations of the judges that the author quotes and describes are as follows: Considering, that the defendant in a written answer filed an exception regarding absolute authority, the plaintiff's lawsuit lacked parties. In this case the panel of judges dated 9 April 2018 has considered rejecting the defendant's exception. This is because the plaintiff was not present during the trial so that the plaintiff's claim was obscure libel. In this case, the panel of judges was of the opinion that the argument of the aquo exception was related to the subject matter, so that it would be considered together with the subject matter, therefore the exception must be rejected.[27]

Furthermore, the panel of judges also stated in its consideration that in this case, both parties, namely the plaintiff and the defendant, have a legal relationship as customers and management of Bank BRI Syariah, and also as legal subjects so that the legal position in this case. This is in accordance with the provisions of PERMA RI No. 2 of 2008 concerning the Compilation of Sharia Economic Law in Article 1 paragraph (2), namely "the subject of law is an individual, partnership, or business entity incorporated or not incorporated that has legal capacity to support rights and obligations".

As legal subjects who are bound by a financing agreement and this can be proven by the position of each party in the agreement, namely as debtors and creditors, which can be proven by letters P.2 and T.8. Specifically the position of the plaintiff and the defendant in the murabahah agreement, then the two parties have a legal relationship, where the plaintiff is the debtor and the defendant is the creditor which can be proven through the murabahah bi al-wakalah financing contract No. 32 dated 29 April 2013, which was made before a Notary in Banda Aceh. This proves that both are legal subjects so that they are seen as parties who have the capacity as persona standi in judicio or legal standing in this case. Based on the above facts, the judge stated that the agreement made had fulfilled the pillars of the contract in the form of ijab and qabul, or actions that indicate

[27] Decision Number 319/Pdt.G/2017/MS, Bna, p. 41.

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a willingness to make an exchange in the form of words or actions and the parties were willing to the agreement contained in the agreement letter as evidenced by the signatures of both parties. Therefore, it should be stated that both parties have understood all the contents and accepted all obligations and rights arising from it as a valid agreement and have binding force between the parties involved.[28]

Considering, based on the letters and evidence submitted by the plaintiff regarding the occurrence of default committed by the defendant, letter evidence P.1 in the form of a wakalah contract regarding the purchase of goods in the context of murabaha financing Number 17-KC-BDA/FS/WAK/04/2013 dated 29 April 2013, and letter evidence P.2 in the form of a murabaha bi al-wakalah financing contract No. 32. Furthermore, to refute the arguments of the plaintiff's lawsuit regarding the default, the defendant has submitted letter evidence in the form of T.8 in the form of a murabahah bi al-wakalah financing contract No. 32, and evidence T.9 in the form of general terms and conditions of murabahah financing. Based on this evidence, it is not proven that the defendant has committed an act that can be categorised as an act of default, but the actions of the defendant in transferring the murabaha financing facility money in the plaintiff's account to the developer were not in accordance with the mutual agreement in the provisions of Article 6 of the wakalah contract regarding the purchase of goods in the context of murabaha financing Number 17-KC-BDA/FS/WAK/04/2013 dated 29 April 2013. So it is clear and suspicious that there is an element of darkness between the bank and the developer so as to harm the plaintiff.[29]

Considering, paying attention to the murabahah bi al-wakalah financing contract Number 32 Article 11 concerning ownership of goods which states that, "by agreeing to this contract, the first party (defendant) has submitted and transferred proof of ownership of the goods to the second party (plaintiff) as it was at the time of signing this letter and the second party (plaintiff) has stated that the goods are in good condition from the first party (defendant) so that from today the second party (plaintiff) is

[28] Iwandi Iwandi, Rustam Efendi, and Chairul Fahmi, "THE CONCEPT OF FRANCHISING IN THE INDONESIAN'S CIVIL LAW AND ISLAM," *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 4, no. 2 (2023), https://doi.org/10.22373/al-mudharabah.v5i2.3409.

[29] C. Fahmi et al., "Defining Indigenous in Indonesia and Its Applicability to the International Legal Framework on Indigenous People's Rights," *Journal of Indonesian Legal Studies* 8, no. 2 (2023), https://doi.org/10.15294/jils.v8i2.68419.

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the legal owner of the goods", as stated in the plaintiff's letter evidence (P.2), as well as the defendant's letter evidence (T.8).

Based on the article in the contract, it is correlated with the elements that can be categorised as an act of default when the performance that has been mutually agreed upon in the agreement or the performance that arises from the contractual relationship of the parties must be fulfilled. The panel of judges was of the opinion that these elements were not fulfilled by the defendant's actions, due to the fact that the plaintiff had signed the wakalah contract and the murabahah bi al-wakalah financing contract and had even made monthly financing instalments, which meant that the plaintiff had acknowledged receipt and delivery of the goods according to the agreement.[30]

In Article 192 paragraph (1) RBg. The plaintiff as the losing party was sentenced to pay court costs and all applicable laws and regulations and Shara' laws relating to this case.[31] The judges of the Banda Acehyar'iyah Court have issued a decision expressly rejecting the defendant's exclusion entirely and rejecting the plaintiff's claim entirely. The court also ordered the plaintiff to pay court costs totalling Rp 391,000.

This decision was handed down in a deliberation meeting of the panel of judges of the Banda Aceh Syar'iyah Court class I A on Monday 4 June 2018 AD. coinciding with the 19th of Ramadan 1439 H., by us Drs. Mazharuddin, M.H., as Chairman of the Panel, Dra. ANB. Muthmainah W.H., M.Ag. and Drs. Ahmad Sobardi, S.H., M.H. each as Member Judges, and was pronounced in a hearing open to the public on Monday 9 July 2018 AD. coinciding with 25 Shawwal 1439 H. by the said Chairman of the Panel accompanied by the said Member Judges and assisted by Urizal, S.H., M.H. as Substitute Registrar, in the presence of the Plaintiff's Attorney and the Defendant's Attorney.

One of the sharia-based transactions that is widely implemented by the community today is in the form of murabaha sale and purchase transactions, which is a sale and purchase contract that prioritises transparency in the sale and purchase contract, especially in the price rate set by the seller to the buyer by explaining the capital component and the level of profit obtained.

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[30] Chairul Fahmi, "THE DUTCH COLONIAL ECONOMIC'S POLICY ON NATIVES LAND PROPERTY OF INDONESIA," *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 5, no. 2 (2020), https://doi.org/10.22373/petita.v5i2.99.

[31] Decision Number 319/Pdt.G/2017/MS, Bna, p. 53.

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In this murabahah sale and purchase transaction, the seller honestly explains the profit margin that will be obtained from the transaction as a profit on the sale of the object of trade. With some modifications, this murabahah financing transaction is implemented in Islamic financial institutions, both banks and non-banks. As used by the management of BRI Syariah, which combines the murabahah sale and purchase agreement with the wakalah agreement, so that in the application of this contract the management of the Bank In this murabahah sale and purchase transaction, the seller honestly explains the profit margin that will be obtained from the transaction as a profit on the sale of the object of trade. With some modifications, this murabahah financing transaction is implemented in Islamic financial institutions, both banks and non-banks. As used by BRI Syariah management, which combines the murabaha sale and purchase agreement with the wakalah agreement, so that in the application of this contract the management of the Bank.

The lawsuit filed by the debtor customer has been determined by the Panel of Judges of the Sharia Court of Banda Aceh City in decision No. 319/Pdt.G/2017/MS/Bna. In this decision, the panel of judges was still wrong in deciding this case because the defendant should not have disbursed funds to the developer because in the murabahah bi al-wakalah contract the transfer process should have been carried out by the bank to the debtor customer. But the fact is that the bank directly transfers to the developer not to the plaintiff's account, which should go through a process from the bank to the customer and then the developer. In the murabahah bi al-wakalah agreement, the customer applies for financing to the bank, the bank should buy a house for the customer, the bank gives wakalah to the customer to buy a house on behalf of the bank, then the bank sells it to the customer. The money should have been transferred by the plaintiff, the first stage was transferred but in the second stage of the settlement the bank immediately transferred it to the developer, this is what is wrong so it is feared that there is an insider game between the bank and the developer because this is a government bank that cannot be thwarted by the customer. This means that the panel of judges is still wrong in deciding this case. Given that murabahah bi al-wakalah financing is a transaction based on cooperation between the financier and the customer, an amicable settlement may be a desirable option before seeking a legal decision.

Judges' considerations in making decisions include very important elements which include the value of circumstances and legal certainty. In addition, the judge's legal considerations are also very important because

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they are final and binding so that they will determine the fate of the parties to the case. Judges have an important role in upholding law and justice through their decisions. When making decisions, judges must first review the authenticity of the events presented to them, then evaluate the events and integrate them with the applicable law, judges try to consider relevant previous decisions, both in the context of similar decisions and in broader legal developments, to ensure consistency and fairness in decision making, professionalism standards for judges also affect their considerations. Each judge has a different style and approach to analysing the judgement. Ultimately, judges will combine all these factors to reach a decision that is objective, fair and grounded in law.

CONCLUSIONS

In decision No. 319/Pdt.G/2017/MS/Bna, the panel of judges has considered all the facts that prove the absence of default committed by the defendant have been presented in front of the panel of judges of the Banda Aceh Shari'ah Court, and the panel of judges explicitly that the decision made has fulfilled the principle of justice and or the principle of *audit et alteram partem* (impartiality and equal treatment of the parties) it can be seen from the panel of judges of the Banda Aceh City Shari'iyah Court treating the plaintiff and defendant equally and well in examining the case, adjudicating and deciding this case. However, in decision No. 319/Pdt.G/2017/MS/Bna there are parts that are not fully revealed, especially in the reasons for the defendant who has directly disbursed the second stage of financing to the developer, which should be based on the murabahah bi al-wakalah contract, the second stage disbursement must still be carried out by the debtor customer, namely the plaintiff as a party who has received wakalah from the Banda Aceh branch of BRI Syariah bank to purchase the house he needs and at the same time pay off the price of the house based on the dictum made in the *murabahah bi al-wakalah* financing agreement number 17-KC-BDA/FS/WAK/04/2013. Thus, the decision made by the panel of judges based on the minutes of the trial made in this decision still needs to be reviewed, especially to reveal the fact that the second phase of funds was transferred directly to the developer before the house ordered by the debtor customer was completed by the developer and handed over to the plaintiff.

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