# CHAPTER II
# LITERATURE REVIEW
# "Theoretical Foundation"

## A. Introduction

Literature is an essential part of research because the researchers achieve their goals through the literature. That is why entirely this chapter is allocated for literature review. The literature which is reviewed for this research contains classic and modern literature. This research mainly focuses on the classic literature because the issue of this research is related to religion, where the oldest documents are the most valuable. Besides that, some modern cases and literature have also been compared to old, classic, and first-hand sources.

The related literature is organized into four parts. The first part is the differentiation between Islamic banking and conventional banks. The second part is about Murabaha. The third part is the promise. And the last part is about the determinants causing the Murabaha contract to be used more than other contracts by Islamic rural banks in Yogyakarta. These four issues are the main points of the present research.

## B. Differences between Conventional Banks and Islamic Banks

The Islamic teachings aim at the people to achieve the advantage of the lifecycle in the world civilization. As Qoran says: {فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ...} [الجمعة: ١٠][49] And when the prayer is over, then disperse in( the land and seek God’s grace) the word grace (فضل) here means to earn money by trading or selling and buying.  Islamic religion encourages the members of society to be spread out on the earth only looking for God’s rewards, that is, the encouragement of Islam in terms of economics, says Shandy.[50]

[49] [الجمعة: ١٠]

[50] Utama Andrew Shandy, “History and Development of Islamic Banking Regulations in the National Legal System of Indonesia,” *Research Gate* 15 (2019): 37–50, Islamic banking, history of Islamic banking, Indonesia.



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Islamic banking is interest-free, so it is different from conventional banking. Islamic banks operate under other ethics, and they have other risk outlines. Islamic banks have two types of regulations. The first type is the roles of governments and the central banks that govern the conventional banks. The other type of rule is the Shariah Supervisory Boards that approve the products of the Islamic banks and keep a check over the implementation of the rules defined by Shariah boards. The central banks issue some rules which are exact to the Islamic banks. For example, the primary capital required to establish Islamic banks is higher than that of conventional banks. On the other hand, Islamic banks have to pay more registration costs and taxes because it is asset-based banking. The Islamic banks have to own the item that it further sells, which eventually are paid for by the client, and that situation increases the cost.[51]

On the other hand, the conventional economy is considered by positivist philosophy which is based on pragmatic experiences only. The foundation of conventional banks is away from the guidance of God. In this economy, happiness or joy is followed merely in the real world and is super materialist. Islamic economy practices the guidance of the only God through Quran, Hadith, Ijma, qias and Ijtihad. As the result, the motivation in the conventional economy is personal interest only. At the meantime in Islamic economy, the driving force is the interest and the order of God-.[52] UBL, a Pakistani Bank, differentiates Islamic from conventional banks in terms of products (see table 4).

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[51] Salman Asma - Nawas Huma, "Islamic Financial System and Conventional Banking: A Comparison," *USEK Holy Spirit University of Kaslik*, 2018, https://www.sciencedirect.com/journal/arab-economic-and-business-journal.

[52] Shandy, "History and Development of Islamic Banking Regulations in the National Legal System of Indonesia."

Table 4. A.
The differences between Islamic Banks and Conventional Banks in terms of products **(Current Account)**

| | Conventional | Islamic |
|---|---|---|
| 1 | No specific underlying mode is used in the Current Account. | Ameen Current Account is based on Qard contract where the bank is liable to pay the depositor's money back on demand. |
| 2 | The bank can use these funds for investment and other purposes regardless of the Shariah prohibition. | The Bank can use these funds for investment and other purposes. It allows the satisfaction of having the money safely deposited in a bank with the additional assurance that the bank is not investing in activities that contravene Shariah principles. |
| 3 | Cost-free services are offered to the customer, which is tantamount to interest. | Free-of-cost services are offered to all customers across the board. It means all free services are provided to current as well as saving account holders |

Table 4. B.
Differences between Islamic Banks and Conventional Banks in Terms of Products **(Saving Accounts)**

| | Conventional | Islamic |
|---|---|---|
| 4 | No specific underlying mode is used in Saving Account. | Islamic Saving Account is an "investment for profit" account governed under the rules of Mudarabah to provide a return on the investment. |
| 5 | The Bank can use these funds for investment and other purposes regardless of the Shariah prohibition. | The funds deposited will be invested in an investment pool. The investment/deposit/transfer-in of funds will be deemed the purchase of investment shares in the respective investment pool, and withdrawal/encashment/premature encashment of funds is deemed to be the sale of investment shares in the said investment pool. |
| 6 | Debtor-Creditor Relationship. | Mudarib, Rab-ul-Maal/Partners |
| 7 | Interest | Profit |

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Table 4. C.
Differences between Islamic Banks and Conventional Banks in terms of product
**(Leasing/Ijarah)**

| | Conventional | Islamic |
|---|---|---|
| 8 | The lease commences the very day the Bank pays the price, whether the Customer has taken the delivery or not. | Rentals start after asset delivery, not from when Bank has paid the price. |
| 9 | The customer pays expenses incurred in the process of purchase of assets | The bank is the owner of the asset; therefore, it is liable to pay all expenses incurred in the process of its purchase |
| 10 | Leasing does not differentiate between wear & tear or losses caused by the customer's negligence, and the customer is liable for the cost incurred due to natural disasters. | The customer is responsible only for misuse and negligence, not for events beyond control. In Auto Ijarah, each situation is treated separately. |
| 11 | Penalty charges are taken from the customer on late payment. They are taken as income by the Bank. | If the customer fails to pay the rental on the due date, the customer undertakes to pay charity which is credited into the charity account, for further disbursement to charitable organizations |
| 12 | In a lease agreement, Bank has given unrestricted power to terminate the lease unilaterally. | If the customer breaks any agreement term, Bank has the right to terminate Auto Ijarah unilaterally. However, if there is no infringement at the customer’s, auto Ijarah cannot be terminated without mutual consent. |

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Table 4.D.
Differences between Islamic Banks and Conventional Banks in Terms of Products **(Lending/Finance)**

| | Conventional | Islamic |
|---|---|---|
| 13 | Conventional banks are in the business of lending & borrowing money based on interest. | Islamic banks are not money-lending institutes. They work as trading/ investment houses. |
| 14 | In conventional banks, there is no restriction. Interest is the backbone of this system, and short selling, the sale of debts, and speculative transactions are common. | Islamic banks work under socio-religious guidelines that prohibit charging and paying interest and avoid all impermissible transactions like gambling, speculation, short selling, and selling debts and receivables. |
| 15 | In conventional banks, all types of industries are financed. Only businesses deemed illegal by the law of the land are not supported. | Islamic banks do not permit financing to industries that cause harm to society, such as alcohol and tobacco. |
| 16 | Generally, conventional banks do not involve themselves in trade and business as they act only as money lenders. | One of the Islamic bank business models is based on trade. It needs to participate in trade and production processes and activities actively. |
| 17 | The conventional bank does not have the framework mentioned in the Islamic banks. | Islamic banks have a strong Shariah governing framework in terms of the Shariah Board that approves the transactions and products in light of the Shariah rulings. |
| 18 | In conventional banks, almost all the financing and deposit side products are loan based. | Islamic Banks recognize loans as non-commercial and exclude them from the domain of commercial transactions. Any loan given by Islamic banks must be interest-free. |

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|---|---|---|
| 19 | Conventional Bank treats money as a commodity and lends it against interest as | Islamic banking products are usually asset-backed and involve trading of assets, renting assets, and participation on a profit-and-loss basis. |
| 20 | The relationship between the customer and the bank is a Creditor-Debtor. | The relationship between customer and bank is as Seller-Buyer and Partner. |
| 21 | Compensation is always Interest | Compensation is always Price (*Thaman*) |

Source: Digital Corporate Portal UBL Funds Online

## C. Literature on Islamic Banking in Indonesia

Eighty-six percent of Indonesia's population is Muslim. Most follow the Shafi'i Sunni school (madhhab), which has the world's largest Muslim population. Although Indonesia has the largest Muslim population, it was slow to create Islamic banking. For the first time in Banking Act No. 7, the Indonesian Government allowed Islamic banks to be created alongside conventional banks in 1992.

### 1. Creation of the Islamic Banking system in Indonesia

According to the available literature, the creation process of Islamic banking in Indonesia could be divided into three stages. The first one is the stage of thinking. The second stage is the stage of preparation and creation. The third and last stage is the stage after creation.

#### a. Thinking Stage

The first stage (thinking) of establishing Islamic banking in Indonesia started in the 1930s. This stage is the theoretical stage. At that time, Indonesia was under the colonization of the Dutch. Because of the colonization, the relationship between the Government (the Dutch) and the Muslims of Indonesia was very uncordial. The group of fundamentalist Muslims at that time made the first attempt to create Islamic banks. The first person who raised the idea of without benefit (interest)/usury (ربا) was K. H. Mas Mansur, one of the Muslim Ulama (scholars) and the leader of the Muhammadiyah organization. The idea of K. H.

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Mas Mansur created some debates among socialist leaders, such as Mohammad Hatta and the Islamic ulama of Indonesia. The leaders of socialist parties argued that the conventional banks' interest is voluntary between the parties. In this issue, any signs or elements of extortion or coercion are not found. On the other hand, it is for the benefit of society, and the required amount is not so large. K. H. Mas Mansur argued that the interest charged by conventional banks is illegal (*haram*) according to Islam. Then the third idea emerged; it was between legal (*halal*) and forbidden (*haram*). It is doubtful.

The first vice president of Indonesia during 1945 – 1956 was not interested in establishing the Islamic banking system, so he did not support that idea. The doubt between *halal and haram* caused the slow emergence and growth of Islamic banking, and this doubt still exists in Indonesian Muslim society.[53] Until the 1960s, Islamic banking was the issue of desiccation among Muslim intellectuals and Islamic *Ulama*. At that time, writers were interested in publishing papers and books about Islamic economics. The case of interest-free loans was more interesting. The idea of the Muslim Brotherhood party in Egypt affected most Indonesian writers.[54] Other hindrances were legal matters. It can be seen that 1930 to 1980 was a time of thought and discussion on the Islamic economy and banking.

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**b. Preparation and Establishment of Islamic Banks**

Indonesian Ulama and Muslim intellectuals raised the idea of creating the Islamic banking system again, more substantial than in the 1980s. When the Indonesian *Ulama* and scholars saw the success of Islamic banks in Malaysia and some other Muslim states, they were encouraged to create Islamic banking. At that time, the Government was applying the idea of Pancasila firmly

[53] Zahri Hamat3 Mutiara Dwi Sari1, *, Zakaria Bahari2, "History of Islamic Bank in Indonesia: Issues Behind Its Establishment," *International Journal of Finance and Banking Research* 2 (2016): 179.

[54] Mutiara Dwi Sari, Zakaria Bahari, "History of Islamic Bank in Indonesia: Issues Behind Its Establishment."

and strictly. Because of that, any idea with the word Islam was not supported by the Government.

The relationship between the Government and Islam improved in 1982. The Government had been losing the support of its Army (ABRI). The Government wanted to find new supporters, and it was from the *Ulama* and Muslim intellectuals. That is why the Government opened the door to them. The Muslim scholars and *Ulama* thought it was time to raise the Islamic economy and Banking issue, which they have been fighting for a long time. At the same time, the education of intellectual Muslims had increased. In this way, the power of Muslim society increased.

Indonesia's Government issued a policy package (PAKTO) In October 1988 on the liberalization of banking. This policy allowed a 0% interest banking system. This policy opened the door for the creation of Islamic banking. After the green light from the Government, there was another shortage. It was the lack of capital for the startup of the Islamic banks. The limited government support made raising the initial money needed to establish an Islamic bank difficult. Habibi, the Minister of Science and technology from 1978-1998, the Indonesian vice president in 1998, and the president from 1998-1999 made substantial efforts to provide primary funds for creating Islamic banks.

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Intensified movements for the establishment of Islamic banks in Indonesia started in 1990. That year, the Muslim Council of Indonesia (MUI) held a seminar to discuss Islamic banking issues. At the end of this seminar, it was agreed that interest-free banks were allowed to establish. MUI National Congress formed a team to prepare the facilities and conditions for establishing the banks. The group, called the MUI banking team, was responsible for conducting all preparations related to the creation of Islamic banks and consultations with all related parties.

Since Indonesia comprises people of various religions and ethnic groups, the Islamic banks' names would be a problem. Because the Government still had an issue with the use of the word Islam. The possible problems related to fundamentalism and the concerns will cause conformity in the people of Indonesia. There were some Muslims besides the non-Muslims who opposed the usage of the name "Islam." Some groups thought establishing an Islamic bank would open the door to extremists and create an Islamic state. But the Islamic bank teams continued to work carefully to find and apply appropriate measures to convince the opposite parties. The intense effort toward making Islamic banking led to the Government's Act of 1991. This act approved the creation of Islamic banks in Indonesia. Finally, Bank Muamalat Indonesia (BMI) was established in 1992. The primary capital of this bank was Rp 84 billion. It was the only bank in Indonesia providing Islamic banking products in 1992 to 1998.

**c. Maturation of the Thought and Setting Phase**

The establishment of Islamic banking in Indonesia from 1990 to 2000 is a unique stage. BMI was the only Islamic bank in Indonesia at that time. The Government of Indonesia issued law No.7 in 1992, which was about Indonesian banks. This law allows Islamic banking. Section Three of Article One of the mentioned law says, "Commercial Bank is a Bank which bases its activities on conventional and/or Syariah Principles in doing so provides services in payment transactions."[55] This act was a framework for Islamic Banking. The word *Syariah* appears 50 times in this law. Law number 10 of 1998 allowed Islamic banks to provide dual banking products (Islamic and conventional).

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[55] "Act of The Republic of Indonesia Number 7 of 1992 Conserning Banking as Amended by Act Number 10 of 1998," Pub. L. No. 7 (1992), https://www.ojk.go.id/en/kanal/perbankan/regulasi/undang-undang/Documents/Pages/Act-of-the-Republic-of-Indonesia-Number-7-of-1992-concerning-Banking-as-Amended-by-Act-Number-10-of-1998/act_1098e.pdf.

The first Islamic bank was opened in 1992, but this system developed significantly after law number 10 of 1998.[56]

**d. The Growth of Islamic Banks in Indonesia**

The Organization of Islamic Conference believes that Islamic banks, in their operational process, apply laws, rules, and procedures based on the sharia principles. Islamic banks' principles are part of Islamic orders dealing with economic development. As it is known, the basic principle of Islamic banking is profit and loss sharing. This principle enables Islamic banks to create a fair and healthy investment environment. Because of this principle, all parties can share profit and loss, creating a suitable position between the bank and customers. In Islamic banks, only the owners of the capital are not enjoying the profit. But the capital managers also are taking it. Therefore, it will encourage the equity of the economy in the long term.

It will take a long time for Islamic banks to reach their development. One reason for the slow growth of Islamic banking is the chronic suffering of the dichotomy between economics and sharia. This duality arises due to the inability to describe and understand economics and sharia fully.[57] It can be seen in the Indonesian economy as an example.

According to the five basic principles of Indonesia (Pancasila)[58] and the Constitution of 1945 (UUD 1945), the development of Indonesia is to create a just and prosperous society in accordance with economic democracy by developing the balance of the economic system. (see Chapter VIII. Finance Article 23, sections 1, 2, 3, and 4 of the Constitution of 1945

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[56] Mutiara Dwi Sari, Zakaria Bahari, "History of Islamic Bank in Indonesia: Issues Behind Its Establishment."

[57] Shandy, "History and Development of Islamic Banking Regulations in the National Legal System of Indonesia."

[58] Amir SYafruddin, "Pancasila As Integration Philosophy of Education And National Character," *INTERNATIONAL JOURNAL OF SCIENTIFIC & TECHNOLOGY RESEARCH* 2, no. 1 (2013), https://www.ijstr.org/final-print/jan2013/Pancasila-As-Integration-Philosophy-Of-Education-And-National-Character.pdf.

(UUD 1945)). For a sustainable economic democracy, all the people's potential, initiatives, and creativity must be mobilized and developed within safe borders so that all powers become a force to increase the welfare of the people. More attention must be paid to coordination, balanced growth, and national stability in implementing economic development. Sharia principles, which are also based on the values of justice, profit, balance, and universality, are also applied in Islamic banking.[59]

On November 1, 1991, the first Islamic bank, Bank Muamalat Indonesia (BMI), was established.[60] After that, the law Number 7 of 1992 on banks of Indonesia was issued. In this law, the term "Islamic Banking" is not expressed directly. Instead, the term "bank based on Shariah" is used. The paragraph three of article one of the law No7 of 1992 says "*Bank Umum adalah bank yang melaksanakan kegiatan usaha secara konvensional dan atau berdasarkan Prinsip Syariah yang dalam kegiatannya memberikan jasa dalam lalu lintas pembayaran;"*[61] . It means Commercial Bank is a bank that carries out business activities conventionally and or based on Shariah Principles, providing services in payment circulation. This law was a legal basis for Islamic banking operations in Indonesia[62]. After issuing this law, BMI officially started its operation on May 1, 1992. Law Number 7 of 1992 replaced law Number 14 of 1967 to open the gate for the Islamic banking system.[63] Subpart M of article 6 and subpart C of article 13 of

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[59] Shandy, "History and Development of Islamic Banking Regulations in the National Legal System of Indonesia."

[60] Shandy.

[61] "Law of the Repiblic Indonesia (UNDANG-UNDANG REPUBLIK INDONESIA )," Pub. L. No. 7 (1992), https://www.bi.go.id/id/tentang-bi/profil/uu-bi/UndangUndang BI/Undang-Undang-Republik-Indonesia-Nomor-7-Tahun-1992-Tentang-Perbankan-Sebagaimana-Telah-Diubah-Dengan-Undang-Undang-Nomor-10-Tahun-1998.pdf.

[62] Mutiara Dwi Sari, Zakaria Bahari, "History of Islamic Bank in Indonesia: Issues Behind Its Establishment."

[63] Shandy, "History and Development of Islamic Banking Regulations in the National Legal System of Indonesia."

law No 7 of 1992 about banks state that the purpose of Shariah banking system is to provide financial services based on principles of profit sharing.[64] This situation was reinforced by Regulation No. 72 of the same year (1992). According to Regulation No. 72 of 1992, the banks operating based on profit sharing are commercial or rural banks exclusively doing business activities based on the Shariah principle[65]. Law No. 10 of 1998, amended law No. 7 of 1992, strengthened the regulations about Islamic banks.[66] The people of Indonesia lost their trust in banks during the economic crisis of 1998. The businesses of 38 banks were frozen. The Government took seven banks, namely Bank RSI, Putera Sukapura Bank, POS Bank, Bank Artha Pratama, Bank Nusa Nasional, Bank Jaya, and Bank IFI. In addition, four state-owned banks, Dagang Bank, Exim Bank, Daya Indigenous Bank, and Bapindo, merged to become Mandiri Bank.

On the other hand, Islamic banks were not affected by the 1998 economic crisis. Bank Muamalat Indonesia, the only Islamic public bank during the financial crisis in Indonesia, was considered healthy and in the "A" category because of its Capital Adequacy Ratio. It shows that Islamic banks had better performance in comparison to conventional banks. The economic crisis of 1998 also counted as a starting point for developing the Islamic banking system in Indonesia because the Islamic banking system was not affected by the 1998 crisis. After 1999, several conventional banks (state-owned and private banks) established Islamic banks to develop their businesses. They were Bank Syariah Mandiri (1999), Bank Permata Syariah (2002), Bank Mega Syariah (2004), Bank Rakyat, and

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[64] Law of the Repiblic Indonesia (UNDANG-UNDANG REPUBLIK INDONESIA ).

[65] "GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA," Pub. L. No. 27 (1992), https://peraturan.bpk.go.id/Home/Details/57927/pp-no-72-tahun-1992.

[66] Shandy, "History and Development of Islamic Banking Regulations in the National Legal System of Indonesia."

Bank Syariah Bukopin (2008).[67] The government of Indonesia responds to the significant development of Islamic banking in the national banking system by passing law No. 21 of 2008, which is a separate legal base for the Islamic banking system in Indonesia. In legal philosophy, Sharia Banking Law No. 21 of 2008 has met the demands of a sense of justice and assurance of justice seekers, especially in the case of sharia economic transactions.[68]

The growth of Islamic banking has progressed rapidly in Indonesia. An exclusive and exciting period of lengthy growth in shariah banking in Indonesia is the maturation period of the initial and experimental concept that took place in the 90s. Bank Muamalat Indonesia, the only Islamic bank in Indonesia then, became a trademark and pilot project of enormous implementation of the economic law of Shariah thinking in this country. This decade became a momentum that the people of Indonesia have been waiting for for a long time. This period is very strategic for Islamic banking in Indonesia because it is a fundamental step for the success or failure of Islamic banking in the next period.[69]

The growth of Islamic banking in Indonesia is insefungible from the political context, including its presence and judicial problems and problems related to the relationship between Islamic law, national law, and Western law. The thoughts and hard work of Ulama (Islamic scholars) and economists, individually and institutionally, influenced the development of Sharia, as well as the development and progress of Islamic banking in the international community.[70]

During the Coronavirus, Islamic banks in Indonesia showed their resistance to challenges. President Joko Widodo said

[67] Shandy.

[68] "Act of The Repuplic of Indonesia Concerning Sharia (Islamic) Banking," Pub. L. No. 21 (2008), https://www.bi.go.id/id/tentang-bi/profil/uu-bi/Default.aspx.

[69] Shandy, "History and Development of Islamic Banking Regulations in the National Legal System of Indonesia."

[70] Shandy.

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during the launching of the new Shariah bank, Bank Syariah Indonesia (BRIS): "I am pleased to receive a report that the performance of Shariah Banking in Indonesia recorded stable growth, and their growths were higher than the conventional banks." He also pointed out that Indonesia's Shariah economy performance ranked fourth in 2020, rising from 10th place in 2018 to fifth in 2019.[71]

The latest development in the Indonesian Islamic banking system in 2021 was the merger of three Islamic banks and the creation of Indonesia's largest state-owned Islamic bank. Three banks, Bank BRI Syariah, Bank Syariah Mandiri, and Bank BNI Syariah, were subsidiaries of conventional banks, namely Bank BRI, Bank Mandiri, and Bank BNI. They merged and created a new Bank called Bank Syariah Indonesia (BRIS).[72] The asset value of 240 trillion rupiahs ($17.1 billion), making it the Asian country's seventh-biggest bank. President Joko Widodo formally launched state-owned Bank Syariah Indonesia (BRIS) operations.

BRIS President Director Hery Gunardi said: "the merger process began in March, and on February 1st, the bank started operating under its new logo, which features a five-edged star to represent the Pancasila or the five national ideologies and five pillars of Islam". He pointed out that the bank aims to be one of the top 10 Syariah-compliant financial institutions within five years.[73]

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**2. Rural Banks (BPRs and BPRSes)**

There are two kinds of rural banks: The first is Bank Pembiayaan Rakyat (BPR), or the conventional rural bank, which

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[71] "Indonesia Launches Its Biggest Islamic Bank after Year-Long Merger Talks," *Arab News*, 2021, https://arab.news/rjx5h.

[72] Netral.News, "Netral.News," 2021, https://netral.news/en/president-joko-widodo-launched-the-largest-islamic-bank-in-indonesia.html.

[73] "Indonesia Launches Its Biggest Islamic Bank after Year-Long Merger Talks."

OJK[74] translates to People’s Credit Bank; the second is Bank Pembiayaan Rakyat Syariah (BPRS), or Shariah rural banks translated to People's Financing Sharia Bank.

The People's Credit Bank (BPR) is a bank that conducts commercial activities traditionally or based on the principles of Islamic law. BPR, in its activities, does not provide services in the payment movement. Rural banks' activities are more limited than those of commercial banks. The rural banks are prohibited from accepting current account deposits, foreign exchange, and insurance activities.[75]

BPRs are typical Indonesian rural banks. They are primarily dedicated to supporting the development of the economy at the local level. When the BPRs be compared to commercial banks, most of the BPRs are smaller than the commercial banks. Although most BPRs are relatively smaller than commercial banks, they play a significant role in financing micro and small enterprises. According to the regulation, the activities of BPRs, especially in granting loans, are limited within the boundaries of provinces and neighboring regions or municipalities. In addition, compared to commercial banks, BPRs have many limitations in doing their business. According to OJK data, 1,666 BPRs were operating in Indonesia in June 2021. (BPRs) In many cases, the huge numbers and the huge coverage have become a primary financial supporter for middle to low-income populations and small, micro and middle enterprises. These market segments have made BPRs strategic in improving local economic growth and decreasing problems such as disparity, poverty, and unemployment.[76]

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[74] “Source: OTORITAS JASA KEUANGAN (OJK).”

[75] Banking (ojk.go.id)

[76] Akyuwen Roberto, “Research on the Profitability of Rural Banks in Indonesia: A Comparative Study,” *Advances in Social Science, Education and Humanities Research, Volume 629* 629, no. 2nd International Conference on Social Science, Humanities, Education and Society Development (ICONS 2021) (2021).

According to Agus Widarjono, M. B. and Hendrie Anto and Faaza Fakhrunnas, Islamic rural banks' financial stability are better than commercial ones. Even though the value of non-performance financials of Islamic rural banks is higher than that of commercial, they have a lower risk of failure. The profit of Islamic rural banks is lower but more stable than rural commercial banks.[77]

**a. Products of Islamic Rural Banks (BPRSes) of Indonesia**

The products of Islamic banks are the most critical issue because the result of a bank's efforts is its product. The product makes an Islamic bank different from the conventional one. Here, a brief introduction to the products of Indonesian Islamic banks is delivered. Indonesian Shariah (Islamic) banks offer eight types of products. These products will be defined according to OJK,[78] Financial Services Authority, and Islamic jurisprudence.

[77] Hendrie M. B. Fakhrunnas Faaza Widarjono, Agus Anto, "Is Islamic Bank More Stable Than Conventional Bank? Evidence From Islamic Rural Banks in Indonesia," *International Journal of Financial Research* 12,No. 2, no. Islamic Banking (2021).

[78] OJK (*Otoritas Jasa Keuangan) (Statistik Perbankan Syariah)* is Sharia Banking Statistics. And the Sharia Indonesia Banking Statistic is a publication media that provides data regarding the Sharia banking industry in Indonesia. The SPS is published by Banking Licensing and Information Department monthly to give an overview of banking development in Indonesia. Start in May 2014, data of the SPS which is a collection of data Sharia Commercial Bank (BUS) and Sharia Business Unit (UUS) compiled sourced from the repart of BUS-UUS based on PBI No. 15/4/PBI/2013 about Monthly Repart on Monetary and Financial System Stability of Sharia Commercial Banks and Sharia Business Unit. Previously repart from BUS-UUS compiled based on PBI No. 26/5/PBI/2003 about Monthly Repart of Sharia Commercial Banks. In the December 2015, edition of the SPS, there are changes BUS-UUS data format. These changes to customize the data source previously Sharia Commercial Bank Monthly Repart (LBUS) became Monetary Stability Repart and Financial System (LSMK). To assist the reader in understanding this change, then the December 2015 edition has been equipped with matriculation of changes tables and metadata. Besides the change of format, there is also a change in the composition of the table so that the table BUS-UUS in tables 1 - 25. The BPRS table in table 26-47. Hopefully this change will provide more comprehensive information for stakeholders. file:///C:/Users/Salim%20Salim/Desktop/SPS%20D

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### I. Wadiah Contract (الوديعة)

According to OJK, "*Wadiah* contract is a contract between the goods' owner (the money) and the custodian for safekeeping."[79] According to Islamic general jurisprudence, *الشيء المودع فهو عبارة عن شيء مملوك ينقل مجرد حفظه إلى المودع.* A deposited thing is something that is owned, and it is deposited to the custodian merely for preservation (safekeeping). According to the Islamic general Jurisprudence, the *Wadiah* contract has four pillars, namely the owner of the good/money (the depositor), the words (the contract), the good (the deposited), and the safekeeper. Each of these pillars has some conditions found in the books of Madhhab (Islamic schools).[80] According to Hanafi jurisprudence الإيداع تسليط المالك غيره على حفظ ماله صريحا أو دلالة Al-aidaa (Wadiah Contract) gives the power to the other on preserving their goods explicitly or indicatively.[81] According to Shafi'i jurisprudence *الْوَدِيعَةِ هِيَ الْعَقْدُ الْمُقْتَضِي لِلِاسْتِحْفَاظِ أَوْ الْعَيْنِ الْمُسْتَحْفَظَةِ بِهِ حَقِيقَةً* The Wadiah contract is the contract for the custody of the original of the good (not the same) that retains the truth.[82] According to Hanbali jurisprudence, الإيداع توكيل في الحفظ تبرعا Wadiah contract is an authorization on safeguarding voluntary.[83] And according to Maliki jurisprudence, *Wadiah* contract is الوبيعة هي توكيل على مجرد حفظ مال Wadiah contract is Authorization (to authorize) on protecting only on a good.[84]

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[79] OTORITAS JASA KEUANGAN (OJK)."

[80] Abdu Al-Arahman Al- Jaziri, *Ktabul Feqhe Ala Al- Mzheb Al-Arbate* (Birot: Darul Kotob Al-Almiah, 2003).

[81] Abdu Al-Rahman bn Mohammad bn Slaiman Al-kilboli Al-Madaw bShaikh Zada, *Majmau Al-Anhur Fi Sharh Multqul Abhur* (Birot: Darul Kotob Al-Almiah, 1998).

[82] Mohammad ben Abi Al-Abas Aahmad ben Hamzah ben shahabudeen Al-Ramli, *Nhaiatul Motaj Ela Sharhe Al-Menhaj* (Birot: Darul Kotob Al-Almiah, 2003), https://waqfeya.net/book.php?bid=7046.

[83] Al-Bhoti Mansur ben Edris, *Al-Rawd Al-Al-Moraba Sharho Zad Al-Mostaqnea* (Al-Read: Maktabato Al-Read Al-haditha, 1970).

[84] Al-Tswale Abu Al-Hasan Ali ben Abdu Ssalam, *Al-Bahja Fi Sharh Al-Tohfat* (Lebnon Bairot: Darul Kotob Al-Almiah, 1998).

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The Wadiah contract is defined according to the Indonesian concept and four Sunni schools. As it is seen, they are very close to each other. All of them share one thing, and that is safekeeping. According to general Islamic jurisprudence, this contract has four pillars, but the Sunni schools have different ideas about these pillars. And each pillar has some conditions. It is a good topic for researchers to research this issue to see whether Indonesian Shariah banks consider these conditions or not.

## II. Mudharaba Contract (المضاربة)

According to OJK Mudharaba Contract, a contract between a capital provider and an entrepreneur or a fund manager, whereby the entrepreneur or fund manager can mobilize the funds of the former for its business activity within the Sharia guidelines. Profits made are shared between the parties according to a mutually agreed ratio.[85] General Islamic jurisprudence provides two definitions for the Mudharaba contract. The first is linguistic, and the other is the definition of jurists. In linguistics, it is that someone pays a good (money) to another to trade on, the profit is shared according to their agreement, and the risk is on the owner of the good (money). But according to Islamic jurists, it is a contract between two parties. One provides the good (money) that he owns. The other party trades on that money on the clear (known) profit with special conditions.[86] According to the Hanafi school, هي شركة في الربح بمال من جانب وعمل من جانب it is a sharing business in profit with money from one side and the work from the other side.[87] Two parties are making a company; one is providing only money, and the other is sharing his work. As seen in the definition, they share the profit only, not the loss. According to Maliki

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[85] OTORITAS JASA KEUANGAN (OJK)."

[86] Abdu Al-Arahman Al- Jaziri, *Ktabul Feqhe Ala Al- Mzheb Al-Arbate*.

[87] Al-Hanafi Zainu Ddeen abn NOjaim, *Al-Bahru Rraeq Sharh Kanzu Al-Dqaeq* (Birot: Darro Al-Marefat, n.d.).

[88]حقيقة القراض دفع مالك مالا من نقد مضروب مسلم معلوم لمن يتجر به بجزء معلوم من ربحه قل أو كثر بصيغة (Mudharaba in Maliki school is called Qeradh). The *Qeradh* (Mudharaba) is that the owner of the money pays the clearly-known amount of money in cash to whoever trades with a known part of his profit, less or more. According to Shafi'i school وحقيقته توكيل مالك بجعل ماله بيد آخر ليتجر فيه والربح مشترك بينهم. The fact of Mudharaba is that the owner of money gives the authority of his money to another to do business on, and the profit will be shared[89] . According to the Hanbali school هي أن يدفع إنسان ماله إلى آخر، يتجر له فيه، والربح بينهما حسب ما يشترطانه It is that a person pays his money to another, to do business on that money, and the profit will be shared according to the condition which is agreed[90] .

As it is seen, all the definitions provided are very close to each other. They all state that the profit will be shared according to mutual agreement. All of them ignore the possible loss. Only the definition provided by general Islamic jurisprudence clearly states that the loss of money goes to the owner of the money. There are many conditions for the Mudharaba contract to be valid in Islamic jurisprudence books. It also could be a good topic for researchers to see how these conditions are applied in Indonesian Shariah banks.

## III. Musharaka Contract (المشاركة)

According to OJK, Musharaka Contract is a contract between two parties. Both parties provide capital and may be active in managing the venture. Losses are shared based on how much capital has been contributed. Profits are shared in

[88] Al-Sawee Ahmad, *Beloghat Ssalek Leaqrabe Al-Masaalek* (London: Darul Kotob Al-Almiah, 1995).

[89] Al-Sharbini Moammad Al-khatib, *Al-Eqna Fi Hal Alfaz Abi Shoja* (Birot: Darul Feker, 1994).

[90] Al-Marozi Eshaq ben Mansoor, *Masaail Al-Emam Ahmad Bn Hanbal Wa Eshaq Ben Rahuiah* (Madinatul Monawarah: Amadtu Bahs Al-Elmi, 2002).

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any way the partners decide.[91] According to general Islamic jurisprudence, Musharaka, Sharekat, or Sherkat is divided into four types: *Sherkatul Anan*, *Sherkatul Mofawadah*, *Sherkatul Abdan*, and *Sherkatul Wojoh*.[92] Musharaka in Islamic banks is Sherkatul Anan.[93] So here, the definition of Sherkatul Anan according to Islamic schools is provided. According to Hanafi school it is defined as وَهِيَ أَنْ يَشْتَرِكَ اثْنَانِ فِي نَوْعِ بُرٍّ أَوْ طَعَامٍ ، أَوْ يَشْتَرِكَانِ فِي عُمُومِ التِّجَارَاتِ وَلَا يَذْكُرَانِ الْكَفَالَةَ this contract is that two parties sharing in a type of wheat or food, or to participate in general trade and not mention the guarantee[94]. According to the Hanbali school, شركة العنان ان يشترك اثنان بماليهما ليعملا فيه بدنيهما وربحه لهما *Sherkatul Enan* is that two parties making a shared business with their money to work both of them and the profit will be for both of them.[95] According to the Shafi'i school شركة العنان هو أن يختلط مالاهما بحيث يتعذر التمييز بينهما إلا بقسمه ويأذن كل منهما لصاحبه في التصرف ثم حكمهما توزيع الربح والخسران على قدر المالين *Sherkatul Enan* is that two parties mix-up their money on the way that the distinction of the two is impossible, unless by using the type of the good provided. Furthermore, everyone authorizes his partner to operate, and the profit and the loss are according to the amount of money.[96]

There are many types of Musharaka in Islamic jurisprudence, but the Musharaka related to contracts is divided into four types. According to OJK, only the kind of Anan is used in Indonesian Sharia banks. The definitions that

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[91] 2020, "No Title."

[92] Abdu Al-Arahman Al- Jaziri, *Ktabul Feqhe Ala Al- Mzheb Al-Arbate*.

[93] Hamza Mohammad Abdo Rrawof, "Al-Msharakat Fi Al-Shariatel Aslam" (Sant Kliments, 2007).

[94] Al-Babarti Mohammad ben Mahmood, *Al-Enaiah Sharhe Al-Hedaiah*, n.d., http://www.al-islam.com.

[95] Al-Maqdesi Abn Qodamah Shamsu Ddeen abi Al-Faraj Abd Rrahman Mohammad bn Ahmad, *Al-Sharh Al-Kabir Ala Matn Al-Moqna* (Birot: Darul Kotob Al-Arabi lel Nashre wa Al-tawze, n.d.).

[96] Al-ghezali Abo Hmed Mohammd ben Mohammad, *Ehiau Olomu Ddeen* (Birot: Dar Al-Marefat, n.d.).

OJK and Islamic schools provide share three things. Firstly, both parties provide money. Secondly, both may work in the business. Lastly, the profit and loss are divided according to the amount of capital.

**IV. Ijarah Contract (Leasing)**

According to OJK, Ijarah Contract is the selling of a benefit or use, or service for a fixed price or wage.[97] According to Islamic general jurisprudence الإجارة هي تمليك المنفعة بعوض *Ijarah* is the transferring of the ownership of the benefit. *Ijarah* is the transfer of ownership of a benefit in exchange for something.[98] According to Maliki school هِيَ عَقْدٌ لاَزِمٌ عَلَى الْمَنَافِعِ المُبَاحَةِ it is a contract on a lawful benefit which creates necessity.[99] According to Hanafi school الإجارة عقد يفيد تمليك منفعة معلومة مقصودة من العين المستاجرة بعوض. Ijarah is a contract that transfers the ownership of a rented thing's known and intended benefit.[100] According to the Shafi'i school الاجارة شرعا تمليك منفعة بعوض بشروط Al-Ijarah, according to Islamic law, is a transfer of the ownership of benefit in exchange for something with conditions.[101] According to the Hanbali school وهي عقد على منفعة مباحة معلومة تؤخذ شيئا فشيئا مدة معلومة من عين معلومة أو موصوفة في الذمة أو عمل معلوم بعوض معلوم Al-Ijarah is a contract on getting known lawful benefit serially in a known duration of time, from a known item or a known described object which is owned or it is a contract on known activity for a known exchange (salary)[102]

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[97] "Source: OTORITAS JASA KEUANGAN (OJK)," *Source: OTORITAS JASA KEUANGAN*, 2020.

[98] Al-Zohaili dr. Wahbat, *Al-Feqhol Islami Wa Abelatohu* (Damishq: Darul Feker, n.d.).

[99] Al-Baghdadi Abdurrahman Shahabu ddeen, *Ershadu Al-Salek* (Al-Sherkatu Al-Afriqiah lettabat, n.d.), المكتبة الشاملة.

[100] Al-Zohaili dr. Wahbat, *Al-Feqhol Islami Wa Abelatohu*.

[101] Al-khatib Mohammad Al-Sharbini, *Al-Eqna Fi Hal Alfhz Abi Shoja* (Birot: Darul Feker, 1995), Al-Maktabtu Al-Shamelah.

[102] Al-Hajawi Sharafuddin Mosa ben Ahmad bn Mosa Abo Al-Njaa, *Al-Eqnaa Fi Feqh Al-Amam Ahmad Ben Hnbal*, ed. Al-Sabki Abdullxdf Mohammad Mosa (Birot: Dar Al-Marefat, n.d.), http://www.raqamiya.org.

**V. Salam Contract**

According to OJK, Salam Contract is a contract in which the seller undertakes to supply some specific items to the buyer on a future date at a mutually agreed price fully paid at the time of the contract.[103] Salam according to general Islamic jurisprudence السلم هو أن يسلم رأس المال في مجلس العقد على أن يعطيه ما يتراضيان عليه معلوما إلى أجل معلوم ولايأخذ إلاما سماه أو رأس ماله و لايتصرف قبل قبضه. Salam is that the purchaser delivers the capital/price of the item in the contract meeting to give him the known item, which both parties agree on at a known time. The purchaser can not receive the item except as mentioned in the contract, and he will not have any power (control) over it before handing it (receiving it).[104] Hanafi school defines it as السلم فِي اصْطِلَاحِ الْفُقَهَاءِ هُوَ أَخْذُ عَاجِلٍ بِآجِلٍ Salam, in the terminology of jurists, is getting now, paying later Or السلم هو بَيْعُ آجِلٍ بِعَاجِلٍ Al-Salam is selling in the future by the urgent.[105] According to Maliki school السَّلَمُ عَقْدُ مُعَاوَضَةٍ يُوجِبُ عِمَارَةَ ذِمَّةٍ بِغَيْرِ عَيْنٍ وَلَا مَنْفَعَةٍ غَيْرُ مُتَمَاثِلِ الْعِوَضَيْنِ the contract of Salam is contract of exchange which obligates duty of the liability without of the urgent good or benefit in asymmetric exchanges[106]. According to Hanbali school السلم بَيْعُ عَيْنٍ مَوْصُوفَةٍ مَعْدُومَةٍ في الذِّمَّةِ إِلَى أَجَلٍ مَعْلُومٍ مَقْدُورٍ عليه عِنْدَ الْأَجَلِ بِثَمَنٍ مَقْبُوضٍ عِنْدَ الْعَقْدِ Salam is selling of a described non-existent item on the liability to a known time which to be feasible on the object, buy the handed money at the time of contract. According to Shafi'i السلم هو بيع موصوف في ذمة بلفظ سلم Salam is a selling of a described good, which creates liability by the word of Salam.[107]

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[103] "Source: OTORITAS JASA KEUANGAN (OJK)."

[104] Al-Shawkani mohammad ben Ali ben Mohammad Al-Shawkani, *Al-Drari Almodhit Sharh Al-Dorar Albahiat* (Lebnon: Darul Kotob Al-Almiah, 1987), http://www.raqamiya.org.

[105] Al-Hanafi Zainu Ddeen abn NOjaim, *Al-Bahru Rraeq Sharh Kanzu Al-Dqaeq*.

[106] Al-Maleki Abi Abdullah Mohammad ben Ahmad ben Mohammad, *Sharh Miaartul Fasi* (Birot: Darul Kotob Al-Almiah, 2000).

[107] Al-Ansari Abu iahia Zakaria bene Mohammad bene Ahmad bene Zakaria, *Manhajo Al-Tolab*, Abo Mariqa (Birot: Darul Kotob Al-Almiah, 1998).

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The definitions by OJK, general Jurisprudence, and the Jurists are the same, but in different ways. The definition that OJK provides is clearer, and the definition by Hanafi jurists is shorter with complete meaning. The Salam contract is more complicated with many conditions. It also could be a very fruitful issue for researchers to research.

## VI. Qardh Contract (القرض)

According to OJK, *Qardh* contract is a loan in which the debtor is only required to repay the amount borrowed.[108] According to general jurisprudence القرض لُغَةً الْقَطْعُ وَعَرَّفَهُ الْفُقَهَاءُ بِأَنَّهُ دَفْعُ الْمَال إِرْفَاقًا لِمَنْ يَنْتَفِعُ بِهِ وَيَرُدُّ بَدَلَهُ in linguistic expression Qardh means to cut something and the jurists define it that it is to pay money to home benefit from that money kindly and he will return the same amount.[109] According to the Hanafi school القرض هو عقد مخصوص يرد على دفع مال مثلي لرد مثله Qardh is a particular contract which means, that a good which has many similar goods, to be paid to someone, to be able to return the similar good.[110] According to the Shafi'i school, الإقراض هو تمليك الشيء على أن يرد مثله Qardh is to transfer the ownership of something to return the similar thing.[111] According to the Maliki school, القرض هو دفع متمول في مثله غير معجل لنفع آخذه فقط Qardh is the payment of the lender to the borrower's benefit to get the similar thing back in the future.[112] According to the Hanbali school, وهو دفع مال إرفاقا

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[108] "Source: OTORITAS JASA KEUANGAN (OJK)."

[109] Wzaratol Awqaf wa Al-shoaon Al-Islamiat - Al-Kuwait, "Al-Mawsuatu Al-Kuwaitiah," in الموسوعة الفقهية الكويتية (١ / ١٧٢) : وَهُوَ لُغَةً الْقَطْعُ . وَعَرَّفَهُ الْفُقَهَاءُ بِأَنَّهُ دَفْعُ الْمَال إِرْفَاقًا لِمَنْ يَنْتَفِعُ بِهِ وَيَرُدُّ بَدَلَهُ (Darol Ssalasl, 2006), Al-Maktabtol Al-Shmelah.

[110] Al-Kaliboli Abdurahman bebe Mohammad bene Solaiman, *Majmau Al-Anhore Fi Sharhe Moltaqa Abhor* (Birot: Darul Kotob Al-Almiah, 1998), Al-Maktabatu Al-Shmelah.

[111] Al-Ansari Abo Iahia Zakaria bene Mohammad bene Ahmad bene Zakaria, *Fatho Al-Wahab Besharh Manhajo Al-Tlab* (Birot: Darul Kotob Al-Almiah, 1998), Al-Maktabatu Al-Shamelah.

[112] Alish Mohammad, *Manhu Al-Jalil Sharh Alaa Mokhtasar Khalil* (birut: Darul Feker, 1998), Al-Maktabto Al-Shamilah.

القرض لمن ينتفع به ويرد بدله[113] Qardh is the transfer (paying) of money kindly, to those who get benefit from that money and return the same amount of money instead.

All the above definitions share that in this contract, only the borrower gets the benefits, and he has to pay back similar goods, not the samonesnes. This contract should have some conditions and situations that make it different from Salam, Hadiah, Ariah, and to be for from *usury* (*Reba*). It also could be a good topic for research.

### VII. *Istishna* Contract (استصناع)

Like other contracts, the Istishna contract will be defined according to OJK first, then the Islamic jurists' definitions will be reviewed. *Istishna* contract, according to OJK, is a contract in which the seller undertakes to supply some specific goods to the buyer on a future date at a mutually agreed price as a payment method.[114] *Istishna* contract is considered one of the modern legal terms, and that is why contemporary Sharia scholars defined it with its legal definitions.[115] According to Islamic general jurisprudence الاستصناع هو التعاقد على صنع شيء معين كالأحذية والآنية والسيارات والبواخر، والمفروشات ونحوها. وقد تردد بين اعتبار كونه بيعاً أو إجارة أو وعداً، ثم استقر على تسمية خاصة به. *Istishna* is a contract on manufacturing a specific thing, such as shoes, vessels, cars, ships, or furniture. It was hesitated between considering it *baia* (a sale), Al-Aejar (renting), or Al-Wad (promise). Then it was settled on a specific name of *Istishna*.[116] According to Hanafi jurisprudence, الاستصناع شرعا فهو طلب العمل منه في شيء خاص على وجه مخصوص (Istishna according to Shariah is to ask

[113] Al-Hajawi Sharafuddin Mosa ben Ahmad bn Mosa Abo Al-Njaa, *Al-Eqnaa Fi Feqh Al-Amam Ahmad Ben Hnbal*.

[114] "Source: OTORITAS JASA KEUANGAN (OJK)."

[115] Al-Seer Sad, *Al-Istishna (Al-Moqawalat)*, 2008, Al-Maktabatu Al-Shamilah.

[116] Al-Zohaily Wahbto, *Feqh Al-Slami Wa Adelataho* (Damishq: daro Al-Nasher, n.d.).

(want from) someone to work on something in a particular way).[117]

Istishna contract is defined by OJK, general Islamic jurisprudence, and the Hanafi school. The other Islamic schools have not given a specific definition for this contract. The definitions by OJK, Islamic general jurisprudence, and Hanafi school have one shared point that someone makes a good or brings some changes in an item, and the other party pays money. In OJK and Islamic general jurisprudence definitions, it is unclear whether the buyer orders or just buys something someone makes. However, the Hanafi definition mentions that the buyer orders, and the seller makes it. The Hanafi definition is closer to the meaning of *Istishna*, because, according to Arabic grammar, the word إستصناع Istishna means wanting to make something. *Istishna* is very close to some other contracts, so it could also be a good topic for researchers to do new and beneficial research.

**VIII. Murabaha Contract (المرابحة):**

The Murabaha contract, according to OJK, is the sale of goods at a price, which includes a profit margin agreed by both parties. The seller must clearly state the purchase and selling price, other costs, and the profit margin at the time of the sale agreement.[118] Murabaha contract, according to general Islamic jurisprudence, is defined as بيع المرابحة هو البيع بمثل الثمن الأول مع زيادة ربح Murabaha contract is a sell by the similar price of the first price with added profit[119].

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[117] Abne Abedeen, *Hasheia Rade Al-Mokhtar Ala Al-Dore Al-Mokhtar Sharhe Tanweero Al-Absare Feqh Abu Hanifa* (Birot: Darul Feker leltbaate wa Al-Nashre, 2000), Al-Maktabato Al-Shamelah.

[118] "Source: OTORITAS JASA KEUANGAN (OJK)."

[119] 2020, "No Title." OJK.

## D. Literature about Sale Contract (عقود البيع)

Aqdul-Murabaha consists of two words *Aqd* and *Murabaha* which means contract and Murabaha sale. So first, the word *Aqd* will be described briefly according to Islamic jurisprudence and Indonesian laws. Since Murabaha is a sale contract in Arabic, Baia (بيع), it will also be briefly discussed according to Islamic jurisprudence and Indonesian literature.

### 1. Contract (Aqd)

In society, a contract is the most familiar legal concept, undoubtedly because the contract is central to the spirit of economic, social, and political life. Usually, in common terminology, the contract, deal, undertaking, agreement, and bargain are seen interchangeably. The word is not essential in this matter. The concept embodied in it is the concept of our freedom to continue living with others. The contract is fundamental because this is a tool by which people in a free society are obliged to do certain things and refrain from doing certain things; otherwise, chaos will prevail in society.[120]

First of all, *Aqd* -which is called contract- will be discussed according to Islamic jurisprudence. Contract in Arabic means linking (closing or concluding) between the parties on a thing, whether a physical or an emotional link, from one or two sides. It is said: A contract is an intention and determination on something.[121] According to jurists, the general meaning of a contract is everything that a person intends to do, whether it is issued by a single will, such as endowment, discharge (إبراء), and oaths, or two wills, such as selling, renting, power of attorney and mortgage. Specifically, it is the connection between the offer and the acceptance. From a legal view, the effect has been proven. Alternatively, it is the connection of the words of one party to the other. From a legal view, its impact has been proven. This definition is prevalent in the phrases of the jurists.[122]

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[120] "No Title," n.d., 10220028 Bab 2.pdf (uin-malang.ac.id).
[121] Dr. Wahbatu Al-Zahaili, *Feqh Al-Aslami Wa Adelatuhu*الفقه السالمى و ادلته.
[122] Dr. Wahbatu Al-Zahaili.

**2. Sale (Baia بيع )**

As Murabaha is a kind of sale (*Baia*), it is important to know what a sale is, what the main pillars are, and the conditions of validity of a sale contract according to Islamic jurisprudence. Before discussing Murabaha, sale (*baia*) will be addressed because all the sale conditions apply to Murabaha. Islamic general jurisprudence defines Sale (بيع) linguistically. It is idiomatically defined by Islamic juridical schools (*Madhaheb*).

Aljaziri in his very popular and valuable book on Islamic general jurisprudence *Alfeqh ala Al-Madhaeb Al-Arbah* ( الفقه على المذاهب الأربعة), provides a linguistic definition for sale *Al-Baia* (البيع) as follows. Sale - is "هو في اللغة مقابلة شيء بشيء"- is in language corresponding to something with something. One of them is called sold thing (مبيع), and the other is called the price (الثمن). According to the linguistic definition, it does not matter whether the sold thing or the price is pure or unclear, whether getting a benefit from them is legal or not. They are called the sold item and the price, but legally they are different (see the details in the following pages). Some Jurists say that: the linguistic meaning of *Baia* (بيع) sale is to Transfer of ownership of a good to someone in exchange for a good (price).[123]

According to Hanafi school (بيع) هُوَ مُبَادَلَةُ الْمَالِ بِالْمَالِ بِالتَّرَاضِي sale is exchanging the valuable good for valuable good by mutual consent[124]. Hanafis say the sale contract has one pillar (ركن): proposal and acceptance.[125] According to Hanafis, a sale has some conditions to be valid. Furthermore, they divide the conditions of a sale contract in different ways. It is organized in some tables to be understood easily. See table 5.

[123] Abdu Al-Arahman Al- Jaziri, *Feqhe Ala Al- Mzheb Al-Arbate* (Birot: Darul Kotob Al-Almiah, 2003).

[124] Al-Zailay Fakhruddin uthman ben Ali, *Tabeenul Haqaaieq Sharh Kanzul Daqaaieq* (Bulaq: Al-Matbatul Amiriah Al-kobra, 1897).

[125] Abdu Al-Arahman Al- Jaziri, *Ktabul Feqhe Ala Al- Mzheb Al-Arbate*. Val.2- P 141

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Table 5
The Conditions of Sale (*baia* بيع) According to Hanafi Jurisprudence

<table>
<tr><td rowspan="6">Conditions of Conducting<br>شروط الانعقاد</td><td>in Contract</td><td>Affirmation of propose to acceptance. (When the second party accepts another thing or some of the proposed item the contract will not be conducted.)</td></tr>
<tr><td rowspan="2">in Contractor</td><td>The contractors must be sapient</td></tr>
<tr><td>Both parties must not be the same person</td></tr>
<tr><td>in both goods (the sold item and the price)</td><td>Both the sold item and the item placed as the price must be valuable goods.</td></tr>
<tr><td>in the sold item</td><td>The sold item must exist and not be in danger of disappearing, and must be owned, and be owned by the vendor, and deliverable</td></tr>
<tr><td colspan="2" style="display:none"></td></tr>
<tr><td rowspan="2">Conditions of Validity<br>شَرْطُ النَّفَاذِ</td><td colspan="2">The seller must own the sold item</td></tr>
<tr><td colspan="2">There must not be the rights of others in the sold item.</td></tr>
<tr><td rowspan="2">Condition of Healthiness<br>شَرْطُ الصِّحَّة</td><td>General</td><td>All the conditions of the contract and the sale must not be temporary. The sold item and the price must be known, and the sale must be useful. The contract will be void when it is not useful, such as selling Dirham by dirham. There must not be any void conditions from a party. There must not be life time of options choice for any parties. There must not be options of choice for an unknown time, and there must not be options of choice for more than three days.</td></tr>
<tr><td>Specific</td><td>The time must be known if the price is paid in the future. The price must not be transferred to someone else who owes it to the seller. The contract must not suspect usury, and the first price must be known in the Murabaha contract.</td></tr>
<tr><td>Condition of Requirement<br>شَرْطُ اللُّزُومِ</td><td colspan="2">To be free of four popular choices<br>خُلُوُّهُ عن الْخِيَارَاتِ الْأَرْبَعَةِ الْمَشْهُورَةِ</td></tr>
</table>

Sources: Hanafi School Book الفتاوى الهندية في مذهب الإمام الأعظم أبي حنيفة النعمان
Fetawa Al-Hindiat[١٢٦]

Islamic scholars look at the types of sales from different points. There seem to be differentiations among the Islamic schools in the types of sales. However, in the end, the result would not be very different. It means that the general outcome is very close to each

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other. For a better understanding of the types of sales according to the Hanafi school, see table 6.

Table 6
Types of Sales according to Hanafi school انواع البيع

| In general | نَافِذٌ Valid | مَوْقُوفٌ Detained | بَاطِلٌ Void (invalidable) | فَاسِدٌ Validable | |
|---|---|---|---|---|---|
| بِالنَّظَرِ إلَى الْمَبِيعِ To concentrate the sold Item | بَيْعُ الْعَيْنِ بِالْعَيْنِ وَهِيَ الْمُقَابَضَةُ selling the item to item it is called Muqayadhah | وَبَيْعُ الدَّيْنِ بِالدَّيْنِ وهو الصَّرْفُ selling money to money it is called Sarf | وَبَيْعُ الدَّيْنِ بِالْعَيْنِ وهو السَّلَمُ selling money to item it is called Salam | وَعَكْسُهُ هو بَيْعُ الْعَيْنِ بِالدَّيْنِ كَأَكْثَرِ الْمَبِيعَاتِ هَكَذَا selling item to money it is called the majority of selling are | |
| وَبِالنَّظَرِ إلَى الثَّمَنِ To concentrate the price | مُرَابَحَةٌ بِمِثْلِ الثَّمَنِ الْأَوَّلِ وَزِيَادَةٍ Murabaha (to sale on the same price of the first price with adding) | تَوْلِيَةٌ وهو بَيْعٌ بِالثَّمَنِ الْأَوَّلِ لَا غَيْرُ Tawliah (to sale on the same price of the first price) | ضِيعَةٌ وهو بَيْعٌ بِأَنْقَصَ من الثَّمَنِ الْأَوَّلِ Wadhiah (to sale lower than the first price) | مُسَاوَمَةٌ دون نظر الى ثمن الاول Mosawamah | إِشْرَاكٌ Eshrak |

sources: Hanafi school book Fetawa Al-Hindiat and Al-Bahru Rraeq Sharh Kanzu Al- daqaeq الفتاوى الهندية في مذهب الإمام الأعظم أبي حنيفة النعمان [١٢٧] البحر الرائق شرح كنز الدقائق[١٢٨]: (48 / 15)

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According to Maliki jurisprudence, (بيع (البيع هو نقل الملك بعوض بوجه جائز sale is the transfer of the property at an exchange in a permissible manner. There are other definitions in Maliki school. One of them is البيع الأعم عقد معاوضة على غير منافع ولا متعة لذة the sale, in general meaning, is the contract of exchange on a real-estate not benefit and not enjoyment.[١٢٩] The sale contract

[126] Al-Shaikh Nezam and a group of Indian Ulama, *Fetawa Al-Hendia Fi Madhhab Al-Emam Al-Aazam Abi Hanifa Al-Noaman* (Birot: Darul Feker, 1991).

[127] Al-Shaikh Nezam and a group of Indian Ulama.

[128] Al-Hanafi Zainu Ddeen abn NOjaim, *Al-Bahru Rraeq Sharh Kanzu Al-Dqaeq*.

[129] Al-tasweli Abu Al-Hasan Ali ben Abdu Ssalam, *Al-Bahjat Fi Sharhe Al-Juhfah* (Birot Labnan: Darul Kotob Al-Almiah, 1998), Al-Maktabatu Al-shamilah.

benefit and not enjoyment.[130] The sale contract has five pillars, according to the Maliki school. See table number 7.

Table 7

The Pillars of the Sale of Maliki school اركان البيع عند مالكي

| البائع Seller | المشتري Buyer | الثمن The price | المثمون The good | اللفظ The words |
|---|---|---|---|---|

Sources: Maliki school book *Al-Qawanin Al-Feqhiah*[131]

The Maliki school sees the types of sale contracts from a different point of view. See table number 8:

Table 8

Types of Sale according to Maliki school انواع البيع

| | | | |
|---|---|---|---|
| صحيح Valid | باعتبار البت To concentrate ending | بيع خيار Bai Khiar | و هو بيع وقف البت فيه على امضائ يتوق It is to be pended to sign of a party |
| | | بيع بت Bai bat | وهو البيع بقطع الخيار It is ended (done) |
| | باعتبار الثمن To concentrate on the price | مساومة Mosawamah | A sale according to the agreement between parties |
| | | استمانة Estamaanh | To sell something at a price lower or higher than the rail value, so return it. |
| | | مرابحة Murabaha | to sell at the same price as the first price with adding |
| | | مزايده Mozaiadah | The seller displays his commodity in the market, and the buyers increase it, so it is sold to the one who pays the most. |
| | | وضيعة Wadhiah | to sell lower than the first price |
| فاسد او باطل Invalid | | | Invalid |

Sources: Al-Muamlat Al-Maliat Al-Moasarah[132], and books from Maliki school

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[130] Al-tasweli Abu Al-Hasan Ali ben Abdu Ssalam, *Al-Bahjat Fi Sharhe Al-Juhfah* (Birot Labnan: Darul Kotob Al-Almiah, 1998), Al-Maktabatu Al-shamilah.

[131] Al-gharnaati Mohammad ben Ahmad ben Jazee Al-Kalbi, *Al-Qawanin Al-Feqhia*, n.d., Al-Maktabatu Al-Shamelah.

[132] Al-Bkabi Sadu Ddeen Mohammad, *Al-Moamalaato Al-Maliat Al-Moaserat Fi Dhawe Al-Islam* (Birot: Al-Maktab Al-Islamii, 2002).

Sale, according to Shafi'i school البيع شرعا مقابلة مال بمال على وجه مخصوص is an exchange of a commodity for a commodity in a special way.[133] The sale to Shafi'is has three pillars (اركان). They are contractors (عاقدين), the sold or contracted commodity (معقود), and the word (الصيغة). Every one of these pillars is divided into two parts. Contractors are two parties the seller and the buyer. The contracted commodity is divided into two parts, the money and the sold commodity. The saying covers two things: to propose and to accept.

Please see table 9.

Table 9
The Pillars of the Sale according to Shafi'i school (اركان البيع عند الشافعية)

| | | |
|---|---|---|
| عاقد The contractors | بائع Seller | |
| | مشتري Buyer | |
| معقود The sold or contracted commodity | ثمن price | |
| | مثمن The sold item | |
| صيغة The word | ايجاب Propose | |
| | قبول Acceptance | |

Source: Seraj Al-Wahaj السراج الوهاج [134]

Shafi'i school sees the sale types from a different point of view. See the sale types according to the Shafi'i school in table 10.

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[133] Alghamrawi Al-Allama Mohammad Al-Zahri, *Al-Serajul Wahaj Ala Matne Al-Menhaj* (Birot: Darul Feker leltbaate wa Al-Nashre, 2019), Al-Maktabtu Al-Shmelah.

[134] Alghamrawi Al-Allama Mohammad Al-Zahri.

Table 10
Types of sale according to Shafi'i school ( انواع البيع عند الشافعية)

| | |
|---|---|
| باعتبار راس المال<br>the price | مرابحة Murabaha |
| | محاطة Muhatah |
| | تولية Tawliah |
| | مساومة Mosawama |
| تسليم العوض متاخر<br>the late delivery of the item | سلم Salam |
| نقد بنقد<br>the money to money | صرف Sarf |
| the choice of return or reject | بيع خيار Baiu khiar |
| باعتبار الصحة<br>validity | صحيح Saheh |
| | فاسد Fased |
| الاصول و الثمار<br>the trees and the fruits | الاشجار Al-Ashjar |
| | الثمار Al-thmar |

Source: Al-Moamalat Al-Maliato Al-Moasarah[135]
المعاملات المالية المعاصرة

According to the Hanbali school, sale البيع مبادلة المال بالمال تمليكا وتملكا is the exchange of good-to-good, giving ownership and getting ownership.[136] The Hanbali school also divides the sale contract into different types with different points of view. See table 11 to see the result of the literature of the Hanbali school.

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[135] Al-Bkabi Sadu Ddeen Mohammad, *Al-Moamalaato Al-Maliat Al-Moaserat Fi Dhawe Al-Islam*.

[136] Al-Maqdsi Abo Mohammad Abduhllah ben qodama, *Al-Mughni Fi Feqh Al-Emam Ahmad Ben Hanbal Al-Shaibani*.

Table 11
Types of sale according to Hanbali School

| Basis | Type of sale |
|---|---|
| باعتبار فسخ العقد و امضائه<br>Based on the rejection and ending | بيع الخيار Baiol kheiar |
| | بيع البت Baiol bat |
| باعتبار الجنس بجنسه او بغيره<br>Based on buying a commodity by the same or different commodity | بيع المكيلات Baiol Makilat |
| | بيع الموزونات Baiol Mawzonat |
| باعتبار الدور و الارضين و الزرع<br>Based on houses and land and plants | بيع الاصول Baiol Asol |
| | بيع الثمار Baio themar |
| باعتبار الثمن بالثمن<br>Based on the money to money | بيع الصرف Baio Ssarf |
| | بيع المراطلة Baiol Moratalh |
| باعتبار تقديم الثمن و تاجيل استلام السلعة<br>Based on the paying the money at present and receiving the commodity in the future | بيع السلم Baio Ssalam |
| باعتبار رأس المال أو بزيادة و نقص<br>Based on the amount of the price (to be the same price of the first purchase or more or less | بيع التولية Baio Tawliah |
| | بيع المرابحة Baiol Murabaha |
| | بيع المواضعة Baiol Mowadhah |

Source: Books of Islamic school (Madhhab) Hanbali [137]

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### a. Conditions of the Sale Contract

A sale contract must have these four conditions: Conditions of Convening (شروط الانعقاد), Conditions of Effectiveness (شروط النفاذ), Conditions of Validity (شروط الصحة), and Conditions of Necessity

[137] Al-Bkabi Sadu Ddeen Mohammad, *Al-Moamalaato Al-Maliat Al-Moaserat Fi Dhawe Al-Islam.*

or Forcibility (شروط اللزوم). Islamic jurists made these conditions to avoid conflicts between people and protect the contracting parties' interests, deny deception (gharar), and keep away from risks due to ignorance.[138]

**1) Conditions of Convening (شروط الانعقاد)**

These conditions are required in a sale contract to be fulfilled in order for the contract to be considered legally binding. Dr. Wahbatul Zuhaili says: " وهي ما يشترط تحققه لاعتبار العقد منعقداً شرعاً"[139] according to Hanafi school there are four kinds of conditions for the convening of a sale contract: in contractors, in the contract itself, in the place of the contract, and in the commodity which the contract is about.

**I. The Contractors' Condition**

There are two conditions in contractors.

i. The contractors must be sane.

ii. The contracting parties must not be the same person (one person). For details, see volume ٤, page 505, and the coming pages of Hashiatul Ebn Abedeen (حاشية ابن عابدين)[140]

**II. The Contract 's Condition**

There is only one condition: the acceptance must be appropriate to the proposal. For details, see Al-Feqh Al-Islami wa Adelatohu الفقه الاسلامي و ادلته Volume 5, page 16.[141]

**III. The Contract's Place Condition**

There is only one condition for the place of contract also: proposal and acceptance must be in the same meeting.

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[138] Abne Aabedin, *Hashiat Radel Muhtar Ala Addurel Mukhtar Sharh Tanwirul Absar Feqh Abo Hanifa* (Birot: Darul Feker leltbaate wa Al-Nashre, 2000), Al-Maktabatul Shmela. V5 – P 61

[139] Al-Zuhaili Profissor dr. Wahbah, *Al-Feqho Al-Islami Wa Adelatohu* (Damishq: Darul Feker, 597), Al-Maktabto Al-shmilah.v5 – p 55.

[140] Abne Abedeen, *Hasheia Rade Al-Mokhtar Ala Al-Dore Al-Mokhtar Sharhe Tanweero Al-Absare Feqh Abu Hanifa*. V 4 p 505

[141] Al-Zuhaili Profissor dr. Wahbah, *Al-Feqho Al-Islami Wa Adelatohu*. V5 p15.

## IV. The Commodity Condition

i. **The commodity must exist**. The sale of the non-existent does not convene before its existence because there are dangers of non-existence. Examples are the sale of calves and fruits before some of them are held on the tree, the sale of the lamb in its mother's body, and the sale of milk in the udders. They are considered invalid because the lamb and the milk are hesitant between existence and non-existence, so they are at risk of non-existence.[142]

ii. **The Commodity must be Valuable (أن يكون المبيع مالا متقوم)** The general jurisprudence describes (مال) a valuable commodity, according to Hanafi school as Professor dr. Wahbah Al-Zuhaili, says in Al-Feqh Al-Islami wa Aderatuhu: " المال عند الحنفية : ما يميل إليه الطبع ويمكن ادخاره لوقت الحاجة. وبعبارة أخرى: هو كل ما يمكن أن يملكه الإنسان وينتفع به على وجه معتاد. والأصح أنه هو كل عين ذات قيمة مادية بين الناس. والمتقوم: ما يمكن ادخاره مع إباحته شرعاً" According to Hanafi, a valuable commodity is anything that human senses and nature are inclined to or want. In other words, a valuable commodity is anything that can be owned and is usually taken advantage of. Furthermore, the best meaning of the valuable commodity is that it is everything that has material value among the people. The values can be saved while legally permissible according to Islamic Shariah.[143]

iii. **The Commodity must be Owned.** To be owned in itself.

iv. **The Commodity must have the ability to be delivered at the Time of Contract.** So, selling a commodity where the seller cannot deliver it at the time of contract is invalid, such as a stray animal or fish in the sea.[144]

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[142] Al-Zuhaili Profissor dr. Wahbah.V5 P 15.
[143] Al-Zuhaili Profissor dr. Wahbah.V5 P 16.
[144] Al-Zuhaili Profissor dr. Wahbah.V5 P 17

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**2) Conditions of Effectiveness (شرائط النفاذ)**

There are two conditions for the effectiveness of a sale contract. One is ownership or guardianship: **الملك أو الولاية**, and the other is that the others than the owner must not have any rights in the sold thing. ألا يكون في المبيع حق لغير البائع

**I. Ownership or Guardianship: الملك أو الولاية**

i. Ownership is the possession of a thing that the possessor can dispense alone when there is no legal impediment, according to Islamic Shariah.

ii. Guardianship is a legitimate authority by which the contract is concluded and executed. It is either original that a person takes care of his business by himself, alternatively, by authorization. It is when a person takes over the affairs of others who are incompetent, either by deputizing the owner as the agent or by delegating the legislator (الشارع) as the guardians, and they are the father, grandfather, and the judge.[145] For details, see Al-Badaeh Volume 5, pages 146-155 and Hashitu abn Abedin V4 P5

**II. The Commodity must be Free from the Others' Rights**

ألا يكون في المبيع حق لغير البائع When there is a right to a non-seller, the contract is suspended, not executable. Based on this, the sale of the mortgaged property shall not be executed, nor selling the rented lease, nor does the owner sell the land on which there is a sharecropping contract. Instead, the sale is subject to the permission of the mortgagee, the lessee, or the farmer. This was the idea of the Hanafi school.[146] Wahbatul Zuhaily, in his book Al-Feqh Al-Islami wa Adillatuhu, narrating from Mustafa Al-Zarqa says; according to the Islamic jurisprudence, the correct opinion is that the

[145] The order or priority for guardian is as, first father then his representative, then grandfather then his representative, then judge then his representative. The meaning of this condition is that the commodity must be owned by the seller, so the sale contract by third party is not valid, because of lack of ownership or guardianship. But according to Hanafi school it is valid but suspended on the owner's leave.

[146] Abne Aabedin, *Hashiat Radel Muhtar Ala Addurel Mukhtar Sharh Tanwirul Absar Feqh Abo Hanita*.V6 P4

sale is not subject to the permission of the mortgagee or the lessee. Even if they have the right to the sold thing since the permission is legal only for an owner or a guardian, instead the sale is valid, but the thing sold is not delivered to the buyer without the consent of the mortgagee or the lease to preserve their right. Instead, the buyer can cancel the sale or wait for the mortgage to be redeemed or until the lease term expires to receive the item sold.[147] The outcome of the above discussion about effectiveness conditions is that the sale contract is divided into two kinds; effective and suspended.

**3) Conditions of Validity of Sale Contract شروط صحة البيع**

The conditions of validity of the sale contract are divided into two parts. The first is the general conditions of validity of the sale contract. The second is the specific conditions of validity of the sale contract.

**a. General Conditions of Validity of the Sale Contract**

General conditions of validity of the sale contract are the conditions that must be present in all kinds of sale contracts to be valid. In general, the contract of sale should be free of the six defects, namely: ignorance (جهالة), coercion (ألإكراه), timing (التوقيت), deceive (الغرر), harm or damage (الضرر), and spoiling conditions (الشروط الفاسدة).

I. Ignorance (جهالة) means obscene ignorance or that leads to a dispute that cannot be resolved, and it is a dispute in which the arguments of the two parties are equally based on ignorance, as if a person sold a sheep from a herd. Ignorance has four types:

   i. Ignorance of class/category (جنس): it refers to the type (نوع) or quantity (قدر) of the sold item concerning the buyer.

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[147] Dr. Wahbatu Al-Zahaili, *Feqh Al-Aslami Wa Adelatuhu*الفقه السالمى و ادلته. V5 P32.

ii. Ignorance of the price: It is not valid to sell something at the price of a alike item. Or at the price which will be agreed upon in the future.
iii. Ignorance of deadlines: it is as in the deferred price or the condition option. The period must be known; otherwise, the contract will be spoiled.[148] See Volume 5, page 219 and Volume 7, Page 70 from *Fathul Qadir* (فتح القدير[149]) and V 2 p 155 of Bedaiatul Mojtahed (بداية المجتهد)[150]
iv. Ignorance in the means of authentication: when the seller stipulates the provision of a guarantor or a mortgage at the deferred price. They must be specific. Otherwise, the contract will be spoiled.

II. Compulsion (اكراه): It is to force someone to do something. It has two types.
   i. Forced or complete compulsion (إكراه ملجئ أو تام). The person is the one who finds himself forced to do the compulsive thing otherwise, he will be killed or beaten, which may lead to the loss of an organ.
   ii. Unforced of incomplete compulsion (إكراه غير ملجئ أو ناقص). It includes threatening imprisonment, beating, or inflicting injustice upon one, such as preventing one from being promoted in his position or relegating him to a rank.

   Both types of compulsion affect the sale contract. So, according to the majority of Hanafi scholars, the

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[148] ويلاحظ أن الذي يجوز تأجيله لأجل معلوم في عقد البيع هو الثمن أو المبيع إذا كان كل منها ديناً ثابتاً في الذمة، فإن كان الثمن أو المبيع عيناً، فلا يجوز تأجيله باتفاق العلماء، فلو باع شخص سلعة معينة على أن يسلمها بعد شهر، أو اشترى شخص بثمن عين ( أي ذات معينة غير دين ) على أن يدفع الثمن بعد شهر، فالبيع فاسد، ولو كان الأجل معلوماً؛ لأن الأجل شرع ترفيها ليتمكن العاقد من الحصول على العوض أثناءه، وهذا أمر يليق بالديون لأنها ليست معينة في البيع، ولا يليق بالأعيان المعينة لأن العين معين حاضر، فيكون تأخير تسليمه ملحقاً ضرراً من غير فائدة أو تحصيلاً لحاصل

[149] Al-Siwasi Kamalu ddin mohammad ben Abdul Wahed, *Sharh Fathul Qadir* (Birot: Darul Feker, n.d.), Al-Maktabatul Shmelah.

[150] Al-Qurtobi Abol Walid mohammad ben Ahmad ben Mohammad ben Ahmad ben Roshd, *Bedaiatul Mujtahed Wa Nehaiatul Mrtsed* (Egypt: Matbatu Mstata Al-Babi Al-halbi wa Awladohu, 1975), http://www.raqamiya.org.

contract under compulsion is void (فاسد), but according to Zufar, it is suspended (موقوف). If it is considered void, The buyer owns the sold thing by collection. He does not own it entirely if the contract is considered suspended. The most correct is that the compulsion contract is considered suspended because, according to the agreement of the Hanafis, if the compelled person permits it after the removal of the compulsion, it is permissible and obligatory in his right. Moreover, it is the order of the suspended contract, not the void contract.[151]

iii. Timing (التوقيت) is the time of the sale contract. For example, if a seller says, "I will sell these clothes for a month or a year," the sale will be void because the ownership of a good cannot be timed or for a period of time.[152]

iv. Deceive (الغرر), the deceiving related to the description, as someone selling a cow and says it produces 5 liters of milk per day because it might be increased as well as decreased. However, the contract is valid when he says that it produces milk without talking about the amount. Deceive (غرر الوجود) destroys the contract as Abo Huraira says that Prophet Muhammad (peace be upon him) prohibited deceived sale (بيع الغرر):

أبو هريرة - رضي الله عنه - أنَّ رسول الله - صلى الله عليه وسلم -: نهى عن بيع الغَرَر ، وبيع الحَصَاة[153]

Abo Huraira (May Allah be pleased with him, says, "the Messenger of God (may God's prayers and

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[151] Al-Kasani Alauddeen, *Badia Al-Sanaia*, ed. mohammad Ali Wajiah Mohammad Tamer Dr. Mohammad, Al-zaini Mohammad Al-Saeed (Darul Kotob Al-Arabi: Darul Hadith, 1982), Al-Maktabat Al-Shamilah. V7 P 188

[152] Al-Zuhaili Profissor dr. Wahbah, *Al-Feqho Al-Islami Wa Adelatohu*. V5 P41

[153] Ebnul Athir Majdu dden Abul Ssaadat Al-Mubarak ben Mohammad Al-Jazari, *Jameul Asool Fi Ahaadithu Rrasool*, ed. Al-Arnoot Abdul Qader (Maktabato Al-halwani, 1969), http://www.mktaba.org. V 1 P 527

peace be upon him) forbade the sale of deceiving and the sale of pebbles”.[154]

v. Harm or damage (الضرر) means that the delivery of a sold item can not be possible unless the seller receives damage.

vi. Spoiling conditions (الشروط الفاسدة) are all of the conditions in which there is the benefit of one party, and shariah did not talk about. It corrupts if it is found in one of the financial exchange contracts, such as selling, leasing, and dividing. However, it would be false in other contracts, such as donations, notarizations, and marriage, and these contracts are valid at that time. Professor Mustafa Al-Zarqa commented on that and said that every spoiling condition is changed to valid according to the people's customs. For details, please see the book of professor Mustafa Al-Zarqa Aqdul Bai (عقد البيع)[155]

c. **Specific Conditions of Validity of Sale Contract**

Specific conditions of validity of the sale contract are specified for some kinds of sale, and these conditions are not necessary for other contracts. These conditions are as follows.

I. Handing in movable goods sale (القبض فى بيع المنقولات): it means that when someone sells something movable he buys, they must have it first on their hands, then sell it to the next person. Because the movable things can be damaged, there is uncertainty in the next sale. Nevertheless, according to Abo Hanifa and Abe Yosof, real estate (unmovable) can be sold before handing it over.

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[154] أخرجه مسلم والترمذي وأبو داود والنسائي. Narrated by Muslim, Al-Tirmidhi, Abu Dawood and Al-Nasa’i.

[155] Al-Zarqa Mustafa Ahmad, *Aqdul Baia* (Damishq: Darul Qalam, 2012), https://ketabpedia.com/تحميل/عقد-البيع. P 28

II. In honesty sale, in sales such as Murabaha contract, Tawliah, Wadhia, or Eshrak, the first price must be known by both parties.
III. Handing of the exchange by both parties in the contract of currency to currency (بيع الصرف) before leaving the meeting of the contract.
IV. The fulfillment of the conditions of Salam when the sale is Salam.
V. Similarity in the exchanged items. When they are usurious and free from suspicion of usury.
VI. The goods bought earlier must be handed before selling in fixed debt.[156]

**4) Conditions of Necessity or Forcibility (شروط لزوم البيع)**

For necessity or forcibility of a sale contract, the contract has to be free of options that allow one of the contracting parties to terminate the contract, such as the option of condition (خيار الشرط) option of the description (خيار وصف)[157] for details and the conditions according to four schools of Islamic jurisprudence please see [158][159] And *Feqh Al-Aslami Wa Adelatuhu* الفقه السالمى و ادلته [160]

## 3. Honesty Sales (بيوع الأمانة)

Honesty sales are all the sales in which the seller declares the capital. In these types of sales, the profit or loss must be known clearly. It is called Honesty selling because the seller must be honest, and he is counted to be honest in telling the capital in the selling proses.[161] Honesty sales have five types.

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[156] Al-Zohaily Wahbto, *Feqh Al-Slami Wa Adelataho* (Damishq: daro Al-Nasher, n.d.) V 5 P41.

[157] Al-Zarqa Mustafa Ahmad, *Aqdul Baia*. P32

[158] Hashiat Radel Muhtar Ala Addurel Mukhrar Sharh Tanwirul Absar Feqh Abo Hanifa.

[159] Abne Aabedin. V4 P6

[160] Dr. Wahbatu Al-Zahaili, *Feqh Al-Aslami Wa Adelatuhu*الفقه السالمى و ادلته.

[161] Ministry of Awqaf and Islamic affairs of Kuwait, “Al-Mawsuat Al-Feqheiat Al-Kuaitiah,” in *Al-Mawsuat Al-Feqheiat Al-Kuaitiah* (Mtanau Daru ssfwat- Egypt, 2006), Al-Maktabatu Al-Shamelah.

I. **Musawamah Sale (بيع المساومة)** Musawamah sale is selling at any price without looking and thinking about the price which the seller bout it. In reality, this is an ordinary sale.

II. **Tawliah Sale (بيع التولية)**
It is the sale at the same price as the first price. in other words, with the capital without an increase in profit, as if the seller made the buyer take his place on the sold thing.

III. **Eshrak Sale (بيع الإشراك)**
It is like the sale of Tawilah, except that it sells only part of the commodity with the amount of money paid only for the bought part.

IV. **Wadhiah Sale (بيع الوضيعة)**
It is a sale for the same price as the first price, with a known decrease in the price.

V. **Murabaha Sale (بيع المرابحة)**
It is selling at the same price as the first with an increase in a known profit.[162]

## E. Literature about Murabaha

There are two kinds of Murabaha. The first is simple Murabaha, which most classic books talk about. The other is compound Murabaha, which Islamic banks use. The compound Murabaha could be called banking Murabaha, promise Murabaha, or Murabaha sale for order. This research is on the Murabaha sale for order. It is the continuation, the development, or the modern style of the theory of the simple Murabaha. Therefore, first, we will see the literature about simple Murabaha and then Murabaha sale for order.

### 1. Simple Murabaha

Murabaha is an Arabic word. Linguistically, the meaning (النَّماء في التَّجْر) growth in business. Modern scholars call it (المرابحة المصرفية) banking Murabaha, or (بيع المواعدة) promising sale or (المرابحة المركبة) compound Murabaha and (المرابحة للوعد بالشراء) Murabaha for buying promises or (مرابحة للآمر بالشراء) Murabaha sale for order. The last

[162] Dr. Wahbatu Al-Zahaili, *Feqh Al-Aslami Wa Adelatuhu* الفقه السالمى و ادلته.

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meaning (Murabaha sale for order) is closer to the modern implementation of Murabaha in Islamic banks.

The definition of Murabaha in term of general jurisprudence (الفقه العام) is - "البيع بمثل الثمن الأول مع زيادة ربح" - to sell something at the first price (which the seller bought it) with adding profit[163]**.** The Kuwaiti Fiqh Encyclopedia (الموسوعة الفقهية الكويتية) defined Murabaha as - - "الْمُرَابَحَةُ لُغَةً: الزِّيَادَةُ وَاصْطِلاَحًا نَقْل كُل الْمَبِيعِ إِلَى الْغَيْرِ بِزِيَادَةٍ عَلَى مِثْل الثَّمَنِ الأْوَّل" Murabaha in linguistic means adding, and idiomatically it is the transfer of every sold item to others, with an increase over the first price.[164]

According to Hanafi school " الْمُرَابَحَةُ نَقْلُ مَا مَلَكَهُ بِالْعَقْدِ الْأَوَّلِ بِالثَّمَنِ الْأَوَّلِ مَعَ زِيَادَةِ رِبْحٍ" Murabaha is transfer of a commodity which is owned by first contract at the same price of the first contract with adding profit.[165] In the Hanafi school's impression, anything spent directly on the commodity is added to the price, like car services, house painting, cleaning, or laundry. All the money which is added to a commodity is regarded as capital. When something is added, the owner should not say," I bought it on that much," but he must say, "it became to me at that much."[166]

According to the Maliki school, "المرابحة بيع السلعة بالثمن الذي اشتراها به وزيادة ربح معلوم لهما" - -Murabaha is selling of a commodity on the price which he/she bought it with adding a known profit.[167] The buyer must tell the seller the amount of money that he/she bought the commodity and the amount of profit that he/she wants to get it. The profit can be a fixed amount. For example, the buyer says, "I bought it at 100, and I want profit 10", or the buyer says, "I bought it 100, and

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[163] Dr. Wahbatu Al-Zahaili, *Feqh Al-Islami Wa Adelatuhu*الفقه السالمى و ادلته.

[164] Ministry of Awqaf and Islamic affairs of Kuwait, "Al-Mawsuat Al-Feqheiat Al-Kuaitiah," in *Al-Mawsuat Al-Feqheiat Al-Kuaitiah* (Mtabau Daru ssfwat- Egypt, 2006), Al-Maktabatu Al-Shamelah.

[165] Al-Hadadi Al-Aebadi Aboba;er fen Ali bdn Mohammad, *Al-Jawharatu Al-Naierat Ala Mukhtasaru Al-Naerah*, n.d., https://ebook.univeyes.com/129119/pdf-الجوهرة-النيرة-على-مختصر-القدوري-٣.

[166] Al-Shaikh Nezam and a group of Indian Ulama, *Fetawa Al-Hendia Fi Madhhab Al-Emam Al-Aazam Abi Hanifa Al-Noaman*.

[167] Al-Dardir Abul Barakat Seedi Ahmad, *Al-Sharh Al-Kabir* (Birot: Darul Feker, n.d.), Al_Maktabatu Al-Shamelah.

I want to profit in each 10 one", or "I bought it 15.000, and I want 10%". If the owner spends money directly on a commodity, he can add it to the price. There are different ways of spending money. If the owner spends money directly on a commodity that brings changes in it (like painting or sewing), he could profit from that amount. Suppose he/she spent an amount that does not directly change the commodity, such as the transportation of the commodity or renting the place for the commodity. In that case, the amount can be added to the price, but can not be added to the profit percentage. In contrast, the services he provides alone can not be added to the price at all.[168]

Jalalu Ddeen Al-Mahali, in his famous book *Hashiatau Qaliobi – wa Amirat* in Shafi'i school, defines the Murabaha as follows. Murabaha contract is valid when someone buys something by 100 and tells another, "I sell it to you at the same price and get profit one in each ten" or "I sold it to you by ten eleven."[169] Al-Ramli says -in his book Nehiatul Mohtaj- according to the word of Allah{ وَأَحَلَّ اللَّهُ الْبَيْعَ } which has a very general meaning. The Murabaha contract is correct without any problem, but Musawama (الْمُسَاوَمَةِ)[170] contract is better.[171]

According to Hanbali school, Murabaha is the sale at the capital and a known profit. Both parties must know the capital. For instance, the seller says, "my capital in this item is one hundred," or "it came to me at one hundred, and I sold it to you at that price, and my profit is ten." This kind of sale is permissible, and there is no dispute about its authenticity.

As seen in all schools' definitions, they share honesty and clearance and tell the same thing in different words. Now we will see what Murabaha is in Islamic banks, in other words, how Islamic banks

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[168] Al-gharnaati Mohammad ben Ahmad ben Jazee Al-Kalbi, *Al-Qawanin Al-Feqhia*.

[169] Al-Mahali Jalalu Ddeen Mohammad ben Ahmad, *Hashiata Al-Qliobee Wa Amirah Ala Kanzu Rraghebin Sharh Menhaju Ttaalebeen Lel Nawawi* (Birot: Al-Maktabtu Al-Asriah, 2008), https://www.daralsalam.com/ar/BookDetails/index?BookCode=2138108&Code=1.

[170] الموسوعة الفقهية الكويتية. بيع المساومة وَهُوَ الْبَيْعُ الَّذِي لاَ يُظْهِرُ فِيهِ الْبَائِعُ رَأْسَ مَالِهِ (9 / 9) :Musawama contract is that the seller does not clear the price on which he bought it when he selling it. (Al-Mousuatul Feqhiatul Al-Kuwaitiah)

[171] Al-Ramli Al-Ramli, *Nhaiatul Motaj Ela Sharhe Al-Menhaj*.

define Murabaha. It is also essential to see the fatwas about the application of Murabaha by Islamic banks because the way or the system they use seems different. Murabaha in Islamic banks is not just selling and buying but also ordering and promising. The Murabaha applied in Islamic banks is called Murabaha sale for order ( بيع المرابحة للآمر بالشراء)

## 2. Murabaha Sale for Order (Banking Murabaha) ( مرابحة للآمر بالشراء)

Murabaha sale for order is a new term. This term was used for the first time by dr. Sami Hamud in his PH.D dissertation تطوير الأعمال المصرفية بما يتفق مع الشريعة الإسلامية) It developed the banking business under Islamic Sharia[172] which was presented to the Law faculty of the University of Cairo on June 30, 1976. But the practice of this sale was known to the earlier jurists by using a different name. Mohammad ben Al-Hasan Al-Shaibani the friend of Abu Hanifah, and Al-Imam Malek in his book Al-Mowata, and Imam Shafi'i in his book Al-Om mentioned this kind of Murabaha.[173] Modern scholars provide many definitions for Murabaha sale for order. They are:

Dr. Sami Hmod states that a client requests the bank to buy an actual commodity the client specifies. At the same time, the client promises to buy the commodity through the Murabaha contract with the agreement between the parties. The money will be paid in installments according to his ability.[174]

Dr. Yonos Al-Mesri states that a person who wants to buy a commodity gives an application to a bank to buy the item he wants because, for example, he does not have enough money for the payment in cash. The seller does not sell it in installments. For instance, the seller does not engage in deferred sales as he does not

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[172] Hamood Sami Hasan Ahmad, *Tatwir Al-Amal Al-Masrafiah Bema Iatafeq Wa Shariatul Islamiah*.

[173] Affanah Hosamuddeen, *Baiul Murabaha Lelaamer Belsheraa* (palestine: Sharekat baitulmal Al-falastini, 1996), https://ketabonline.com/ar/books/1432/read?page=18&part=1#p-1432-18-1.

[174] Hamood Dr. Saamee Hasan Ahmad, "Tatwir Al-Aamal Al-Msrafiah (Bema Iatafeqo Wa Al-Shariatul Islamiah" (Al-Qaherah, 1982).

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know the buyer or needs cash. As a result, the bank buys the needed item in cash and sells it to its client in deferred.[175]

Mohammad Suleiman Al-Ashqar argues that the bank and the customer agree that the bank will purchase the goods. The customer is obligated to buy it from the bank. After that, the bank is obligated to sell it to him at an urgent or deferred price, in which the percentage increase in the purchase price is determined in advance.[176]

Researcher Ahmad Mulhem says that Murabaha is a sale for an order is a purchase request to obtain a described commodity submitted by a customer to a bank, which is matched by acceptance from the bank. There is a promise from both parties, the first promises to buy it, and the second promises to sell it at a price and profit agreed upon in advance.[177]

Al-Nawawi urges that Murabaha sale for an order is when the client of a bank says to the bank, "buy this item, and I promise that I will buy it from you at a known profit, and I will pay the money later on at a known time." Some modern Islamic schoolers named it the sale of promise.[178]

From above definitions it is understood that there are three parties:

Ordering person (the person who orders the bank to buy something)

Islamic bank

The seller (the first owner of the commodity)

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[175] Almesri Dr. Rafiq yonos, *Baiul Murabaha Lelaamer Belsheraa* (Jeddah: King Abdulaziz University, n.d.), https://al-maktaba.org/book/8356/9421#p1.

[176] Al-Ashqar Dr. Mohammad, *Baiul Mrabaha Kama Tajreeha Al-Bonook Al-Aslamiah* (Aman: Dar Al-Nafaes, 1995), http://books.islam-db.com/books/0/search/بيع المرابحة كما تجريه البنوك الإسلامية. د. محمد الاشقر، الطبعة الثانية١٤١٥ - ١٩٩٥ نشر دار النفائس-عمان.

[177] Mulhem Ahmad Salem, *Baiul Murabaha Wa Tatbiqhtoho Fi Masaref Al-Islami* (Aman: Dar Al-thaqafah, 2005), https://www.neelwafurat.com/itempage.aspx?id=lbb148695-110146&search=books. P 79

[178] Al-Nawawi Abo Zekeria Muhayo Al-Din Yahya ben Sharaf أبو زكريا محيي الدين يحيى بن شرف النووي, *Majmoa Sharh Al-Muhazab* المجموع شرح المهذب, n.d.

**a. Conditions of Validity of Murabaha Sale for Order**

The agreement of the parties (Islamic bank and the client) is not enough to validate a Murabaha sale for order. Besides the agreement of both parties, some other conditions must be present for the entire validity of the contract. Murabaha contract is a kind of sale contract, so it becomes permissible and valid in the same situation in which other sale contracts become valid and permissible. Since the Murabaha sale for the order is a kind of sale, all sale contract conditions must be present in general. Besides the general conditions, there are some special conditions for the validity of Murabaha sale for order, and they are as follows:

I. The capital or the amount of money which is spent on a commodity must be known to both parties. The capital information condition is fulfilled as follows:
   i. Knowing the capital. The capital in a commodity is the amount of money that is paid to the first seller based on the contract, plus the subsequent other expenses.
   ii. Knowing the new price (between the bank and the ordering person)

II. The amount of the profit must be known to both parties because it is a part of the commodity's price, and clarity of the price is a condition of the validity of the sale contract.

III. The capital the seller paid for the commodity or spent on it by Murabaha must be from fungible (ذوات الامثال). If the capital in an item does not have a fungible:

According to the Hanafi school, selling this commodity by Murabaha sale is not permissible because it sells an item by its first price plus a known and agreed profit. If the first price of a commodity is not a fungible thing, but the second buyer has the same thing (itself), and the profit is something else (not a part of the commodity's price), the Murabaha sale is permissible. If the capital is not a fungible, the price of that commodity (the value of the commodity) cannot be used in the Murabaha sale because the price will not be 100% fixed.

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Since the Murabaha sale is an honesty sale (بيع الأمانة), it is not possible to be honest 100% in this situation.

According to the Maliki school, there are differences between the exact non-fungible offered goods and the offered secured goods. If the exact non-fungible offered goods are in the hand of the buyer, Murabaha sale is permissible. In this way, this idea is close to the concept of the Hanafi school.[179]

According to the Shafi'i school, the Murabaha contract is permissible even if the capital is not a fungible. However, a person must tell the buyer the details about the commodity's price, which stands as the item's price.[180]

What is understood from the words of Hanbalis is that they do not allow Murabaha when the capital in a commodity is something not fungible but valuable. They also mentioned that if someone buys two or more things in one contract and wants to sell one of them through Murabaha, and if it is not possible to divide the capital on details, it is not permeable like clothes.[181]

If the price in the first contract is frome the same type of the sold itame and it is something possible to be used for usury, selling that commodity through Murabaha is not permissible. Because Murabaha sells something on the first price plus a profit, this profit in the item, which is something from the thing that can be used for Murabaha, is usury, not profit. Kasani says that all schools agree with this condition.[182]

IV. The first contract must be valid according to Islamic Shariah. When the first contract is corrupted, Murabaha sale is not permitted.[183]

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[179] B.M Mfidhu Rrahman, "Raoiat Shariat Hawla Al-Murabaha Wa Sighatoho Al-Masrafiat," *Derasatul Al-Jametl Islametl Alalamiat Shita Ghongh* 4, no. SSN 1813-7733 (2007): 160–96.

[180] Al-Nawawi, *Rawzto Ttalebeen Wa Aomdatul Mofteen*, Abdul Maje (Birot: Al-Maktab Al-Islami, 2009). V3 P531

[181] B.M Mfidhu Rrahman, "Raoiat Shariat Hawla Al-Murabaha Wa Sighatoho Al-Masrafiat."

[182] Al-Kasani Alauddeen, *Badia Al-Sanaia*. V4 P143

[183] Roshd, *Bedaiatul Mujtahed Wa Nehaiatul Mrtsed*. V2 P 213 – 216

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**b. Jurisprudential Characteristics of Murabaha Sale for Order**

The general method of Murabaha applied by Islamic banks all around the world stands on the jurisprudential idea of Imam Shafi (may God have mercy on him). He wrote in his book Al-om:

"وإذا أَرَى الرَّجُلُ الرَّجُلَ السِّلْعَةَ فقال اشْتَرِ هذه وَأُرْبِحْك فيها كَذَا فَاشْتَرَاهَا الرَّجُلُ فَالشِّرَاءُ جَائِزٌ وَاَلَّذِي قال أُرْبِحْك فيها بِالْخِيَارِ إنْ شَاءَ أَحْدَثَ فيها بَيْعًا وَإِنْ شَاءَ تَرَكَهُ وَهَكَذَا إنْ قال اشْتَرِ لي مَتَاعًا وَوَصَفَهُ له أو مَتَاعًا أَيَّ مَتَاعٍ شِئْت وأنا أُرْبِحْك فيه فَكُلُّ هذا سَوَاءٌ يَجُوزُ الْبَيْعُ الْأَوَّلُ وَيَكُونُ هذا فِيمَا أَعْطَى من نَفْسِهِ بِالْخِيَارِ وَسَوَاءٌ في هذا ما وَصَفْتُ إنْ كان قال أَبْتَاعُهُ وَأَشْتَرِيهِ مِنْك بِنَقْدٍ أو دَيْنٍ يَجُوزُ الْبَيْعُ الْأَوَّلُ وَيَكُونَانِ بِالْخِيَارِ في الْبَيْعِ الْآخَرِ فَإِنْ جَدَّدَاهُ جَازَ وَإِنْ تَبَايَعَا بِهِ على أَنْ أَلْزَمَا أَنْفُسَهُمَا الْأَمْرَ الْأَوَّلَ فَهُوَ مَفْسُوخٌ من قِبَلِ شَيْئَيْنِ أَحَدُهُمَا أَنَّهُ تَبَايَعَاهُ قبل أَنْ يَمْلِكَهُ الْبَائِعُ وَالثَّانِي أَنَّهُ على مُخَاطَرَةِ أَنَّك إنْ اشْتَرَيْتَهُ على كَذَا أُرْبِحْك فيه كَذَا"[١٨٤]

If someone shows another a commodity and says, "buy this, I will pay you profit this much or that much. If the second person buys it, it is permissible and valid, but the first person has the right to buy or leave it. He buys it under a new contract if he wants to buy it. And if he does not want to leave it. Also, if someone says to someone else, "Buy me a product," or describes something to buy for him, or says, "buy me whatever you want, and I will give you a profit." All of these are the same. It means that the first sale is permissible and valid. If he said, 'buy it, and I will buy it from you with cash or debt ", the first sale is permissible.

Moreover, they have choices for the other sale. If they renew the contract, it is permissible. If they obligate themselves, it is decomposed because of two reasons. One is that the seller sells something that he does not own it. The other is the possible risk, "If you buy it at that price, I will give you profit like this." So, from Imam Shafi'i (May God have mercy on him), it is clearly understood that the initiative in demand is made by the person who wants to buy the commodity. He shows the item to the second party and asks him to buy it, and he will buy it at

[184] Al-Shafai Al-Amam Mohammad ben Edris, *Al-Om.*

the paid money plus an agreed profit. This is a composite practice, first, a promise for buying from the first party, which gives the order for purchase, and the second Murabaha sale from the party which accepts the order.

**c. Murabaha in the Indonesian Concept**

National Sharia Board – Indonesian Council of Ulama (DSN) issued some Fatwas about Murabaha. The first one is Fatwa NO.04/DSN-MUI/2000, which generally concerns Murabaha. The second one is Fatwa NO. 13/DSN-MUI/IX/2000. This Fatwa concerning the down payment in Murabaha. The third one is Fatwa NO. 16/DSN-MUI/IX/2000. This one concerns discounts in Murabaha. The last fatwa about Murabaha is Fatwa No: 111/DSN-MUI/IX2017 concerning Murabahah Sale and Purchase Agreements. The main points of the fatwas mentioned above are as follows.

1) Fatwa NO.04 / DSN-MUI / 2000 talks about the reasons for issuing the fatwa and society's need for the Fatwa. It says many people need financial assistance from banks based on buying and selling principles. To help the community to carry out and improve welfare and various activities, sharia banks need to have Murabaha facilities for those who need it, namely, selling an item by confirming its purchase price to the buyer and the buyer paying it at a higher price as profit.

   Therefore, The National Sharia Board (DSN) deems it necessary to stipulate a fatwa on Murabaha as a guideline for Islamic banks.

   This Fatwa was reinforced (weighted) by Quran and Hadith.

   **Quran:**

   I. {يَاأَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا} [النساء: ٢٩]

   II. {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥]...

   III. {يَاأَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ} [المائدة: ١]

   IV. {وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَى مَيْسَرَةٍ} [البقرة: ٢٨٠]

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**Hadith:**

I. عن ابي سَعِيدٍ الْخُدْرِيَّ، يَقُولُ: قَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ» رواه البيهقي و ابن ماجه و صححه ابن حبان

II. قَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «ثَلَاثٌ فِيهِنَّ الْبَرَكَةُ، الْبَيْعُ إِلَى أَجَلٍ، وَالْمُقَارَضَةُ، وَأَخْلَاطُ الْبُرِّ بِالشَّعِيرِ، لِلْبَيْتِ لَا لِلْبَيْعِ« رواه ابن ماجه عن صهيب

III. الصُّلْحُ جَائِزٌ بَيْنَ المُسْلِمِينَ، إِلَّا صُلْحًا حَرَّمَ حَلَالًا، أَوْ أَحَلَّ حَرَامًا، وَالمُسْلِمُونَ عَلَى شُرُوطِهِمْ، إِلَّا شَرْطًاحَرَّمَ حَلَالًا، أَوْ أَحَلَّ حَرَامًا (رواه الترمذي عن عمرو بن عوف)

IV. مطل الغنى ظلم

V. لَيُّ الْوَاجِدِ يُحِلُّ عِرْضَهُ وَعُقُوبَتَهُ

VI. أنه سئل رسول الله صلي الله عليه و اسلم عن العربان في البيع فأحله

**Jurisprudential rule** قاعده الفقهية

VII. الاصل فى المعاملات الاباحة الا ان يدل دليل على تحريمها

At the end, of the Fatwa Indonesian council of ulama decided that

**General Provisions of Murabahah in Sharia Banks**

I. Banks and customers must perform a free usury Murabaha contract (*akad*)
II. Goods which are traded are not forbidden by the Islamic Law
III. Banks finance part or all of the purchase price of goods whose qualifications have been agreed upon.
IV. The bank buys the goods that the customer needs on behalf of the bank, and this purchase must be legal and free of usury.
V. Banks must state all matters relating to purchases. For example, if the purchase is made in debt.
VI. The Bank then sells the goods to the customer at a selling price equal to the purchase price plus the profit. In this case, the bank should honestly notify the customer of the cost of goods and the required cost.
VII. The customer pays the agreed price for the goods within a certain agreed period.

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VIII. To prevent misuse or damage to the contract (*akad*), the bank may enter into a special agreement with the customer.

IX. When the bank wants the customer to represent to purchase goods from a third party, the Murabaha contract must be executed after the goods, in principle, become the bank's property.

**Murabaha Provisions to Customers:**

I. The customer applies and promises to purchase a product, goods, or assets to the bank

II. If the bank accepts the application, it must first purchase the ordered assets legally with the trader/seller.

III. The bank then offers the assets to the customer, and the customer must accept (buy) them according to the promise he has agreed upon because, legally, the promise binds. Both parties must make a contract of selling and buying.

IV. In this selling and buying, the bank can ask the customer to pay a down payment when signing the initial agreement of the order.

V. If the customer refuses to buy the item, the bank's actual cost must be paid from the down payment.

VI. When the value of the down payment is less than the loss the bank must bear, the bank can ask the customer to pay the remaining losses.

VII. When the down payment uses the urbun contract as an alternative to the down payment, then

   i. If the customer decides to buy the item, he only has to pay the remaining price.

   ii. If the customer cancels the purchase, the down payment becomes the bank's property at a maximum of the loss born by the bank due to cancellation. If the down payment is insufficient, the customer is obliged to pay off the shortfall.

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**Guarantees in Murabaha:**

I. Guarantees in Murabaha are allowed, so the customers are serious with the order.

II. The bank may ask the customer to provide a guarantee that can be held.

**Debt in Murabaha**

I. In its principle, the settlement of customers' debt in Murabahah transactions has nothing to do with other transactions made by customers with third parties on the goods. If the customer resells the goods at a profit or loss, he is still obliged to settle his debt to the bank.

II. If the customer sells the goods before the installment period ends, he is not obliged to pay off all the installments immediately.

III. If the sale of the goods causes a loss, the customer must still settle his debt according to the initial agreement. He must not delay the payment of the installments or ask for the loss to be calculated.

**Payment Delay in Murabaha:**

I. Customers who have the ability are not allowed to delay the debt settlement.

II. If the customer delays payment intentionally, or if one of the parties does not fulfil his obligation, then the settlement is carried out through the Sharia Arbitration Board after no agreement is reached through deliberation.

**Bankrupt in Murabahah:**

If the customer has been declared bankrupt and failed to settle his debt, the bank must postpone the debt collection until he can return, based on the agreement.

2) Fatwa NO. 13/DSN-MUI/IX/2000 concerns the down payment in Murabaha. The first part of the fatwa talks about the reasons for its issuance. It shows the customer's sincerity in requesting Murabahah financing from the sharia financial institution. The LKS may ask for a down payment.

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In order to implement the Murabaha contract using the down payment, no parties is harmed. Under the principles of Islamic teachings, DSN deems it necessary to stipulate a fatwa regarding a down payment in Murabaha to be used as a guideline by LKS. This Fatwa also was reinforced (weighted) by the Quran and Hadith and the basic rules of Islamic jurisprudence.

**Quran**

I. يَاأَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ...} [البقرة: ٢٨٢]

II. {يَاأَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ...} [المائدة: ١]

**Hadith**

I. الصُّلْحُ جَائِزٌ بَيْنَ المُسْلِمِينَ، إِلَّا صُلْحًا حَرَّمَ حَلَالًا، أَوْ أَحَلَّ حَرَامًا، وَالمُسْلِمُونَ عَلَى شُرُوطِهِمْ، إِلَّا شَرْطًاحَرَّمَ حَلَالًا، أَوْ أَحَلَّ حَرَامًا (رواه الترمذي عن عمرو بن عوف)

II. لَا ضَرَرَ وَلَا ضِرَارَ (رواه سنن ابن ماجه (٢/ ٧٨٤))

III. الاصل فى المعاملات الاباحة الا ان يدل دليل على تحريمها

IV. الضرر يزال

Rules of Fiqh: “The danger (of the heavy burden) must be removed.”

Ulama agreed that asking for a down payment in the selling and buying contract is permissible (*Jawaz*).

The Fatwa Indonesian council of ulama decided that general provisions for a down payment:

I. In the Murabaha financing contract, a sharia financial institution (LKS) can ask for a down payment if both parties agree.
II. The amount of the down payment is determined by agreement.
III. If the customer cancels the Murabaha contract, he must provide compensation to the LKS from the down payment
IV. If the amount of the down payment is less than the loss, the LKS may request additional payments from the customer.
V. If one of the parties does not fulfill its obligations, or if there is a dispute between the two parties, the settlement is carried out through the sharia arbitration board after no agreement is reached through deliberation.

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This fatwa is effective as of the date of stipulation, provided that if in the future it turns out that there is an error, it will be amended and perfected accordingly.

3) Fatwa NO. 16/DSN-MUI/IX/2000 concerns discount in Murabaha. In the beginning, it talks about its issuance. It says that one of the basic principles in Murabaha is the sale of an item to the buyer at the purchase price (*tsaman*) and the required costs plus profit according to the agreement, but sometimes that the seller (Sharia Financial Institution/LKS) gets a discount from the first supplier. With this discount emerges a problem: whether the discount is the seller's right (LKS) so that the selling price to the buyer (customer) uses the price before the discount, or is it the buyer's right so that the selling price to the buyer (customer) uses the price after the discount. In order to obtain legal certainty, under the Islamic sharia principles, regarding the status of the discount in the Murabaha transaction, DSN deems it necessary to stipulate a fatwa regarding the discount in Murabaha to be used as a guideline by LKS. This Fatwa also is reinforced (weighted) by the Quran and Hadith and the basic rules of Islamic jurisprudence.

**Quran**

I. {يَاأَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُود} [المائدة: ١]

**Hadith**

II. الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ، إِلَّا صُلْحًا حَرَّمَ حَلَالًا، أَوْ أَحَلَّ حَرَامًا، وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ، إِلَّا شَرْطًاحَرَّمَ حَلَالًا، أَوْ أَحَلَّ حَرَامًا (رواه الترمذي عن عمرو بن عوف)

**Fiqh Rules**

I. All forms of *mu'amalat* (contracts) are permissible unless there is a *dalil* (cause) that forbids it."

The Fatwa of the Indonesian council of ulama decided that *first*, the price (*tsaman*) in buying and selling is an amount agreed upon by both parties, whether it is equal to the value (*qimah*) of the product which becomes the object of selling and buying, higher or lower. *Second*, The price in the Murabaha selling and

buying is the purchase price and the required cost plus the profit according to the agreement. *Third*, as LKS gets a discount from the supplier in the Murabaha selling and buying, the actual price is the price after the discount. Therefore, the discount is the right of the customer. *Fourth*, If the discount occurs after the contract, the distribution of the discount is done based on the agreement (approval) contained in the contract. *Fifth*, the distribution of the discount after the contract should be agreed upon and signed. *Sixth*, if one of the parties does not fulfil its obligations, or there is a dispute between the two parties, the settlement is carried out through the sharia arbitration board after no agreement is reached through deliberation.

4) Fatwa NO: 111/DSN-MUI/IX/2017, which concerns the Murabaha buying and selling Agreement, also at the beginning talks about the people's need for this fatwa and the importance of this fatwa for the Murabaha selling and buying agreement. It says that the DSN-MUI has stipulated fatwas related to Murabaha sales and purchases, whether for banking, finance companies, financial services, or other business activities. The general assembly has not stipulated fatwas regarding Murabaha sale and purchase contracts for a broader scope as the main fatwa. Based on the considerations above, the DSN-MUI deems it necessary to stipulate a fatwa regarding the Sale and Purchase Agreement Murabaha to be used as a guide. This Fatwa is also reinforced (weighted) by the Quran and Hadith and the basic rules of Islamic jurisprudence.

**Quran**

I. {يَاأَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ } [النساء: ٢٩]...

II. {وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا} [البقرة: ٢٧٥]

III. {يَاأَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ} [المائدة: ١]

**Hadith Nabi SAW**

I. عن ابي سعيد الخدرى رضى الله عنه ان رسول الله صلى الله عليه و آليه وسلم قال: انما اليع عن تراض.

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II. ان النبى صلى الله عليه و آله و سلم قال: ثلاث فيهن البركة: البيع الى اجل و المقارضة و خلط البر بالشعير للبيت لا للبيع.

III. الصلح جائز بين المسلمين الا صلحا حرم حلالا او احل حراما و المسلمون على شروطهم الا شرطا حرم حلالا او احل حراما.

**Ijma (اجماع)**

The consensus of the majority of scholars on the permissibility of buying and selling Murabaha (Ibn Rushd, Beginning of the Medium, Part 2, page 161. See also Al-Kasuti, Badaa' Al-Sana'a, Part 5 pages 220-222).

**Qias:**

The postulate of the Murabaha contract permissibility is the same for the contract's ability to buy and sell. Among these is the word of Allah Almighty: ".. God has justified the trade...". Some scholars also base on the word of Allah Almighty: "It is not sinful for you to seek the gift of Allah Almighty..".

Profit has the same meaning as "gift." Some scholars base the ability of Murabaha also on *qiyas* against the sale and purchase of *tauliyah*. One account mentions that "the Messenger of Allah SAW bought camels for hijra from Abu Bakr at a price (*tauliyah*). When Abu Bakr wanted to give the camel, the Messenger of Allah said, "No. I will pay according to the cost of goods purchased (*tsaman*)." Jumhur ulama has agreed on the permissibility of the Murabaha contract. (For details, see Fatwa NO 111/DSN-MUI/IX/2017 of Indonesian cancel of Ulama)

**General Jurisprudential rules:**

I. الاصل فى المعاملات الاباحة الا ان يدل دليل على تحريمها.

The Basic principle in all transactions is that they are permissible unless there is evidence that they are prohibited.

II. ان للزمن حصة من الثمن

Time has a share of the price.

At the end of the Fatwa decided the following:

**I. General Requirements**

i. Murabaha Contract is a contract of sale and purchase of an item by confirming the purchase price to the buyer, and the buyer pays it at a higher price as profit.

ii. II. The seller (*baaie* بايع) is the party who sells the goods in the sale and purchase contract, whether it is real entity (الشخصية الطبيعة) or legal entity (الشخصية الحكمية).

iii. The buyer (al-Moshtari مشترى) is the party who purchases the sale and purchase contract, whether in the form of a real entity or legal entity.

iv. Original estate (الولاية الاصلية) is an authority owned by the seller because the person concerned is the owner.

v. Legal state (الولاية النيابية) is the authority owned by the seller because the real owner of the commodity gives the concerned person the authority. Thus he works as a representative of the owner or as a guardian of the owner.

vi. Mothman (مثمن) is the commodity that is going to be sold. Mothman is the exchanged value of the price (money).

vii. Ra's mal al-Murabaha (capital راس المال) is the acquisition price in a Murabaha sale and purchase contract in the form of the purchase price (at the time of shopping) or production costs along with costs that may be added.

viii. Thaman al-Murabaha (the price in Murabaha ثمن المرابحة) is the selling price in the Murabaha sale and purchase contract in the form of Ra's mal al-Murabaha plus the agreed profit.

ix. Bai' al-Murabaha al-'adiyyah (simple Murabaha المرابحة العادية) is a Murabaha sale and purchase contract made on goods that are already owned by the seller at the time the goods are offered to potential buyers.

x. Murabaha sale for order (بيع المرابحة للامر بالشراء) is a Murabaha purchase made based on an order from the prospective buyer.

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xi. Financing Murabaha (التمويل بالمرابحة) is a Murabaha in which price payment is not cash.

xii. Bai' al-Mozayadah (بيع المزايدة) is a sale and purchase with the highest price where the determination of the price (*thaman*) is carried out through a process of bargaining.

xiii. Bai' al-Munaqasyah (بيع المناقصة) is a sale and purchase with the lowest price where the determination of the price (*thaman*) is carried out through a bargaining process.

xiv. Al-Bai' al-Hal (بيع الحال) is buying and selling for which payment is made price is done in cash.

xv. Al-Bai 'bi al Taqseet (بيع بالتقسيط) is a sale and purchase that pays the price is done in installments.

xvi. Bai' al-muqassah (بيع المقاصة) is a sale and purchase in which the payment of the price is made through the indemnification of debt.

xvii. Khiyana/Tadlis (خيانة/ تدليس) is a lie from the seller to the buyer regarding the delivery of the ra's mal (the price) Murabaha.

## II. Legal Provisions and Forms of Murabaha

The Murabaha sale and purchase contract may be carried out in the form of simple Murabaha (مرابحة العادية) or Murabaha sale for order (مرابحة للآمر بالشراء).

## III. Provisions Regarding the Validity of the Contract.

i. The Murabaha sale and purchase contract must be stated explicitly and clearly and understood by the seller and the buyer.

ii. The Murabaha sale and purchase contract may be conducted spoken, written, by gestures and actions, and by using the electronics along with sharia and applicable laws and regulations.

iii. As the Murabaha sale and purchase agreement are made in writing, the deed of the agreement must contain information regarding the acquisition price (*Ra's mal al-murabahafr*), profit (*al-ribh*), and selling price (*tsaman al-murabahah*).

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**IV. Terms Regarding the Parties**

i. Buying and selling may be carried out by people or those who are equated with people, both legal entities and non-legal entities, based on the applicable laws and regulations.

ii. The seller (al-Ba'i') and the buyer (al-Musytarl) must be legally competent (ahliyah) in accordance with sharia and the applicable laws and regulations;

iii. The seller (al-Ba'i) must have the authority (territory) to carry out a sale and purchase contract, both real entity and lsgal entity.

**V. Provisions Related to Muslim/Mabi (مثمن / مبيع)**

i. *Muthman/mabi'* is in the form of goods and/or in the form of rights that are completely owned by the seller (*milk uttam*).

ii. *Muthman/mabi'* must be in the form of goods and/or rights that can be used according to sharia (*mutaqawwam*) and may be traded according to sharia and the applicable laws and regulations.

iii. *Muthman/mabi'* must exist, be clearly known, and be handed over (qudrat altaslim) when the Murabaha sale and purchase contract is executed.

iv. In the case of mabi' in the form of rights, the provisions and limitations specified in the MUI Fatwa number I/MLTNAS VII/512A05 shall apply to the Protection of Intellectual Property Rights and the applicable laws and regulations.

**VI. Provinsion Related to Ras Mal al-Murabahah**

i. The price in Murabaha (Ra's mal al-Murabaha (راسالمال المرابحة)) must be known (malum) by the seller and the buyer.

ii. The seller (*al-bai'*) in the Murabaha sale and purchase contract should not lie (take *khiyanah/tadlis* actions) related to the price (the capital) of the sold commodity through Murabaha contract (*Rasul mal al-Murabaha*).

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**VII. Terms Regarding the price (*Thaman*)**

i. The price in the Murabaha sale and purchase contract (*thaman al-Murabaha*) must be stated with certainty at the time of the contract, whether determined through bargaining, auction, or tender.

ii. Payment of the price in the sale and purchase of Murabaha may be made in cash (*baiaul-hal*), or in (*baiaul-muaiia*), gradually/in installments (*baiu al-taqsith*), and under certain conditions. According to the agreement, this can be done by way of debt settlement (bai' al-muqashshah).

**VIII. Terms related to Products and Activities.**

Murabaha which is realized in the form of financing (al-tamwil baiul-Murabaha التمويل بيع المرابحة), Murabaha sale for order (baaiul-Murabaha lil-amir bi-shira بيع المرابحة للآمر بالشراء)' and simple Murabaha (al-Murabaha al-'adiyah المرابحة العادية), the provisions (dhawabith الضوابط) and limits (hudud حدود) of Murabaha as contained in the DSN fatwa. -MUI Number 04/DSN-MUI1|Y DAA} concerning Murabaha apply.

**IX. Closing**

i. If one of the parties does not fulfill its obligations or if there is a dispute between the parties, the settlement is carried out through a dispute resolution institution based on sharia in accordance with the prevailing laws and regulations, as the agreement is not achieved through deliberation.

ii. Applying this fatwa in business activities or products must first obtain an opinion from the Sharia Supervisory Board.

iii. This fatwa is effective from the date of stipulation, provided that if in the future it turns out that there is an error, it will be amended and perfected accordingly.

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## 3. The Modern Studies about Murabaha in Indonesian Islamic Banks

In an article on the Murabaha contract in Indonesia entitled *Non-performing financing analysis (NPF), financing to deposit ratio (FDR), third party funds and debt to equity ratio (DER) Murabaha financing in Indonesia*, Alexander Moda says that "Murabaha is the most extensive financing of Islamic banks. It is improving day by day. Murabaha sales contracts continue to grow and are distributed compared to other sales financing contracts." This article argues that the Murabaha contract is easy to be assessed and judged. It does not require complex analysis and is also more profitable. This study looks at whether non-current financing, financing-to-deposit ratios, third-party funds, and debt-to-equity ratios have a significant impact on financing Murabaha in Islamic banking in Indonesia or not. [185]

Bagia Agung Prabo (Yogyakarta UII School of Law) also wrote an article on Murabaha in Indonesia, “The Performance of the Murabaha Plan in Planetary Banking (a Critical Analysis of the Application of the Murabaha Plan in Indonesia and Malaysia).” He says that the practice of the Murabaha contract in Indonesian Sharia banks could be explained as follows. The first relationship is between the items owner (the seller), and the bank (the buyer/customer). The second is the relationship between a bank (whose position changes from buyer to seller) and the person who buys the commodity through Murabaha. The researcher compares the application of the Murabaha and *Biol Aina* (بيع العينة) contracts between the Islamic banks of Malaysia and Indonesia[186]. *Bayul Ainah* seems to be banned in Indonesia yet allowed in Malaysia.

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[185] : Iskandar Muda, “Analysis of Non Performing Financing (NPF), Financing to Deposit RATIO (FDR), Third Party Funds And Debt to Equity Ratio (DER) Murabahah of Funding in Indonesia Author,” in *TALENTA Conference Series: Local Wisdom, Social and Arts* (Sumatera: TALENTA Publisher, Universitas Sumatera Utara, 2018).(2018)

[186] Bagya Agung Prabowo, “THE PRACTICE OF MURABAHAH SCHEME IN SYARIAH BANKING (CRITICAL ANALYSIS TOWARDS THE APPLICATION OF MURABAHAH SCHEME IN INDONESIA AND MALAYSIA.”

Dr. Air. Trisiladi Supriano, Head of Islamic Finance, Commerce, and Cooperative Studies, conducted excellent research at Ebno Khaldun University, Bogor, Indonesia, entitled "Profit as a Measurement of Pricing and Monetary Policy to Establish Islamic Financial Stability." As we learned from the article's title, this study aims to find the concept of interest rates in Islamic banking that can create justice and economic stability in Islamic banking and the capital market. [187]

It is known that the percentage of Murabaha varies based on the banks and countries. [188] Sharia banks are more inclined to use the Murabaha contract because it is less risky than Mudharabah and Musharaka contracts. Mudharabah and Musharaka are riskier because they use the profit and loss sharing system.[189]

Mohammad Ghozali, Abdul Hafidz Zeid, Ika Prastyaningsih say that compared to the Mudharabah contract, the Murabaha contract has a positive effect on the net profit of Sharia bank. Therefore, Islamic banks are more interested in the Murabaha contract. The dominance of the Murabaha contract in sharia banks has provoked public criticism too. Regarding budgeting, banks still regulate capital unilaterally and use the fund-based cost principle of the conventional bank loan system.[190]

Atina Shofawati claims that in Murabaha contracts of Islamic banks, some common mistakes usually could be seen. Sometimes, some essential parts of Murabaha are not explicitly clarified in the

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[187] MSi Dr. Ir. Trisiladi Supriyanto, Business and Cooperative Study Head of Islamic Finance, Indonesia Ibnu Khaldun University, Bogor, "RATE OF PROFIT AS A PRICING BENCHMARK AND MONETARY POLICY TO CREATE ISLAMIC FINANCIAL STABILITY," n.d., https://www.amazon.com/Profit-Benchmark-Islamic-Financial-Stability/dp/3330027169.

[188] Ahmad Abdulqhder Abrahim, "Murabaha in Islamic Banks: A Fiqhi Study," *International Journal of Al-Turath In Islamic Wealth And Finance* 1 No. 1 (2, no. IIUM Institute of Islamic Banking and Finance (2020).

[189] Mohammad Ghozali, Abdul Hafidz Zeid, Ika Prastyaningsih, "The Implementation of Sharia Compliance in the Murabaha Contract."

[190] Mohammad Ghozali, Abdul Hafidz Zeid, Ika Prastyaningsih.

contract. The buying price is not clear, and the Profit margin is not clear; only the Murabaha margin is specified in percentage per year.[191]

The amount of criticism against the Murabaha contract in Islamic banks shows that the sharia banks do not follow Islamic principles. If so, the sharia banks will destroy and violate their societal position. Failure to follow the principles of Sharia may have a negative impact on the situation of the bank itself and potentially cause the bank to collapse.

## F. PROMISE

Murabaha sale for order or Murabaha of Islamic Bank, or Banking Murabaha stands on two main points. One is both sides' promises, and the other is buying and selling. As we saw above, the customer of the bank orders the bank to buy a particular commodity and promises that he will buy it from the bank at the same price plus a known profit. However, there is a case that a customer buys the commodity from the bank before the bank owns it, which is not permissible according to Islamic shariah. Or, the bank has not purchased the item, but the customer already has set plan to use the item. This may create a loss for the customer. Or, the bank buys the item, but the customer breaks the promise to purchase. The answer to the questions and other issues is by the value of the promise, by seeing what the promise is, or by how binding and non-binding the promise is. So, it will be seen in the Islamic first-hand sources (Quran and Sunnah), classic literature (Feqha), and modern literature, what a promise is, and how binding it is.

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[191] Atina Shofawati, "Murabahah Financing in Islamic Banking: Case Study in Indonesia."

## 1. Linguistic Definition of the Promise in the Arabic Language

The linguistic definition of the promise(الوعد) in Arabic language is:

وعد يعد من باب ضرب يضرب، الوَعْد والعِدَة يكونَانِ مصدرا واسماً. فأمّا العِدَة فتُجمع عِدَات، والوعد لَا يجمع .[192] [193]

The word الوعد in Arabic means promise. In linguistics, it is used to promise of doing something good or bad, as it is possible to say, "I promised to do something (good)" (وعدته خيرا) or, I promised to do something (wrong). (وعدته شرا).[194]

## 2. Idiomatically Definition of Promise Promise in jurisprudential terminology

Different definitions define the promise, but the meanings of these definitions are close to each other. The following definitions are chosen.

Ebnu Arafah

The promise (وعد) is an announcement of doing the announced with loyalty in the future.

تعريف ابن عرفة: "اخبار عن انشاء المخبر مع وفاء فى المستقبل"[195]

Al-Aini

"الوعد في الاصطلاح الإخبار بإيصال الخير في المستقبل والإخلاف جعل الوعد خلافا وقيل هو عدم الوفاء به"[196]

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[192] Abne Faress Abi Al-Husain Ahmad, *Mqaeesu Al-Lughat* (Birot: Darul Feker, n.d.). V6 P 125

[193] Al-Herawi Mohammad ben Ahmad ben Al-Azhari Abo Mansoor, *Tahzibu Al-Lughat*, ed. Morab Mohammad Aewaz (Birot: Dar Ehia Al-Torath Al_Arabi, 2001), http://lib.efatwa.ir/40687/1/3. V3 P85

[194] Ebno-Manzor Mohammad bene Mokrem Al-Afriqi Al-Mesri Al-, *Lesanul Arab - Ebno Manzor* (Birot: Daron Saderon, 2009), Al-Maktabatul Shamelah.

[195] Al-Rasa Abi Abdullah Mohammad Al-Ansari, *Sharh Hodod Ebnu Arafah*, ed. Abo Al-Ajfan Mohammad and Al-Mamori Al-taher (Birot: Darul gharb Al-Islami, 1993).V2 P560

[196] Al-Aini Abo Mohammad ben Ahmad ben Mosa ben Ahmad ben Hosain Al-ghitabi Al-Hanafi Badroddin Ahmad, *Omdatul Qari Sharhe Sahih Al-Bokhari* (Birot: Dar Ehia Al-Torath Al_Arabi, n.d.), https://al-maktaba.org/book/5756. V1 P220

The promise in terminology is informing the delivery of goodness in the future, and breaking a promise is contrary (to the religion). It was said that it is not loyalty.

Arabic Language Academy says that the promise is to promise each other to do something in a specified place and time.[197]
Dr. Nazia Hammad says that the promise could be for a permissible action such us good loan (قرض الحسن), or giving of ownership of something or its benefit to the promised person. Furthermore, promises can be used for sociability, such as visiting a sick person and friends, communicating with relatives (صلة الرحم), accompanying in travels, and neighboring in housing. The promise can also be for marriage. The word *promise* is sometimes used for sinful actions such as promising someone to help in drinking alcohol or promising to help in prostitution, or consuming someone's good by force[198].

By deep thinking about the above definitions, it is clearly understood that

I. The idiomatical definition stands on the linguistical definition.
II. The time to admitting of the promise is the future.
III. The promise is in donation (تبرعات), not in exchanges.
IV. The promise, according to Islamic jurisprudence, concludes from one side.

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**3. The legality of the Promise (مشروعية الوعد):**

Due to the discussion of the use of promise in Murabaha, a kind of Islamic contract in the Islamic banking system, it is essential to see the legality of the promise in Islamic first-hand sources (Quran and Hadith).

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[197] Mjma Al-lghh Al-rbyh, *Al-Mojam Al-Wajeez* (Mjma Al-lghh Al-rbyh, 2014), https://waqfeya.net/book.php?bid=188. P 674

[198] Hammad Dr. Nazih, *Majmau Al-Mstalahat Al-Maliah Wa Al-Eqtshadiah Fee Loghatel Foqaha*, 2009, https://www.noor-book.com/en/ebook--معجم-المصطلحات-المالية-والاقتصادية-في-لغة-الفقهاء--pdf-1579613564. P352

**Quran:** ( واذكر فى الكتاب اسماعيل انه كان صادق الوعد و كان رسولا نبيا)[199]

**The argument in the above verse of Quran:** Ebne Katheer says:

"هَذَا ثَنَاء مِنْ اللَّه تَعَالَى عَلَى إِسْمَاعِيل بْن إِبْرَاهِيم الْخَلِيل عَلَيْهِمَا السَّلَام"[٢٠٠]

God Almighty praised Ishmael son of Ibrahim peace be upon them, with the sincerity of his promise. The sincerity of the promise shows that it is permissible according to Islamic Shariah. In the other verse, God says:

"وعد الله الذين ءامنوا و عملوا الصالحات لهم مغفرة و اجر عظيم"[٢٠١]

He also says,

" لكن الذين اتقو ربهم لهم غرف من فوقها غرف مبنية تجرى من تحتها الانهار وعد الله لا يخلف الله الميعاد "[٢٠٢]

These verses indicate that God Almighty has committed himself to fulfil what he promised his servants and that his promise is undoubtedly true.

**Hadith:** Prophet Mohammad PBUH says:

" آية المنافق ثلاث إذا حدث كذب وإذا وعد أخلف وإذا اؤتمن خان"[٢٠٣].

Another Hadith narrated from him is

"إِذَا وَعَدَ الرَّجُلُ وَيَنْوِى أَنْ يَفِىَ بِهِ فَلَمْ يَفِ بِهِ فَلاَ جُنَاحَ عَلَيْهِ"[٢٠٤]

from above Hadith, it is clearly understood that the promise is permissible.

[199] سورة مريم، ٥٤

[200] Ebne Katheer Amadu ddeen Abo Al-Feda Esmael Al-Dameshqi, *Tafseer Ebne Ktheer*, ed. Mohammad Mstafa Al-Saeed- Rashad Mohammad Al-Saeed - Al-Ajmawi Mohammad Fadhel (Mosesat Qortoba - Maktabat Awlad Shaikh leltorath, 2000), www.altemawy.com.V9 P257

[201] سورة المائدة ، ١٠

[202] سورة الزمر، ١٩

[203] Al-bokhari Al-Jofi Mohammad ben Esmail abo Abdullah, *Al-Jame Al-Saheh Al-Mokhtasar (Saheh Al-BOkhari)*, ed. Al-Bagha Dr. Mustafa Deeb (Birot: Dar Ebn kthir, 1987), Al-Maktabatul Shamelah. V 5 P 2262 متفق عليه: رواه البخارى، كتاب الإميان، باب علامة المنافق،

[204] Al-Tirmizi Mohammad ben Aesa ben Sawrat ben Musa ben Ad-dhak, *Sunan Al-Termezi* (Birot: Dar Al-gharb Al-Islami, 1998), Al-Maktabatul-Shamilah. P٢٨٤٤ , قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ غَرِيبٌ وَلَيْسَ إِسْنَادُهُ بِالْقَوِىِّ, و ضعفه الالباني في سلسلة الاحاديث الضعيفة و الموضوعة, رقم الحديث ١٤٤٧.

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**4. The Ruling of Fulfilling the Promise (حكم الوفاء بالوعد ):**

The classic and modern Islamic scholars (علماء) have discussed the ruling of the promise, whether it is binding or not. There are three ideas about the rule of the promise. The first is that doing or fulfilling promise is binding Wajeb (واجب). Some groups say that doing or fulfilling a promise is good (mustahabb) (مستحب). Some others say that in some cases, it is binding, and in others, it is not binding. Some scholars associate the promise with reasons.

**I. Fulfilling Promise is Absolutely Obliged.**

The important people who have this idea are
Samura bin Jondab سمرة بن جندب [205]
Al-Qadhi ebn Al-Ashwaالقاضى ابن الاشوع
Al-Koffi Al-Hmathani[206]الكوفى الهمذانى
Omar ben Abdul Aziz عمر بن عبد العزيز [207]
Ebn Shabarmah ابن شبرمة[208]
The scholars argue that:
**Al-Quran**:

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ لِمَ تَقُولُونَ مَا لَا تَفۡعَلُونَ٢ كَبُرَ مَقۡتًا عِندَ ٱللَّهِ أَن تَقُولُواْ مَا لَا تَفۡعَلُونَ٣ "

**"**O *you who have believed, why do you say what you do not do? (2) Great is hatred in the sight of Allah that you say what you do not do(3)» [As-Saff: 2-3]*

Ibn Kathir says in the interpretation of the verses: Among the scholars of the Salaf (the early scholars) (**علماء السلف**) who say that fulfilling a promise is absolutely obligatory, even if it creates problems or harms the other party or not, they quote

[205] Ahmad, *Omdatul Qari Sharhe Sahih Al-Bokhari*. V13 P 223

[206] Al-Nawawi Yahia ben Sharaf ben Mari ben Hasan Al-hazmi Al-Horani Al-Nawawi Al-Shafiai Abo Zakaria Mohaiuddin, *Al-Azkar Men Kalame Saeed Al-Abrar Al-Mosama Holdt Al-Abrar Wa Shear Al-Akhiar* (MaKtabato Nazaar Mostafa Al-baz, 1997), https://waqfeya.net/book.php?bid=1499. V2 P376

[207] Ebn Hazm Abi Mohammad Ali ben Ahmad ben Saeed, *Al-Mhalla*, ed. Al-Jziri Abdurrahman Al-Dmeshqi Mohammad monir (Egyot: Edaratu Al-Tbaah Al-Monir, 1928), https://www.noor-book.com/en/ebook-al-Muḥallá-v-7-pdf. V8 P28

[208] Al-Asqalani Ahmad ben Ali ben Hjar, *Fathul Bari*, ed. Shibah Abdul Qader Al-Hamd (Mecca: Maktabato Al-Fahd Al-Watani, 2001), https://ia800609.us.archive.org/14/items/WAQfbssb/fbssb05.pdf.

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these verses as evidence, and they make their arguments according to above verses[209].

Allah in another place says:

"وَمِنۡهُم مَّنۡ عَٰهَدَ ٱللَّهَ لَئِنۡ ءَاتَىٰنَا مِن فَضۡلِهِۦ لَنَصَّدَّقَنَّ وَلَنَكُونَنَّ مِنَ ٱلصَّٰلِحِينَ٧٥ فَلَمَّآ ءَاتَىٰهُم مِّن فَضۡلِهِۦ بَخِلُواْ بِهِۦ وَتَوَلَّواْ وَّهُم مُّعۡرِضُونَ٧٦ فَأَعۡقَبَهُمۡ نِفَاقٗا فِي قُلُوبِهِمۡ إِلَىٰ يَوۡمِ يَلۡقَوۡنَهُۥ بِمَآ أَخۡلَفُواْ ٱللَّهَ مَا وَعَدُوهُ وَبِمَا كَانُواْ يَكۡذِبُونَ٧٧"

“And among them are those who made a covenant with Allah, [saying], "If He should give us from His bounty, we will surely spend in charity, and we will surely be among the righteous."(75) But when he gave them from His bounty, they were stingy with it and turned away while they refused(76), So He penalized them with hypocrisy in their hearts until the Day they meet Him - because they failed Allah in what they promised Him and because they [habitually] used to lie(77)» [At-Tauba: 75-77]

In the interpretation of the verses, Ibn Kathir says that among the hypocrites are some people who promise that if God enriches him from his bounty, they will give charity from his money, and they will be among the righteous. However, they are not loyal to what they say and argue, and this hypocrisy will remain in them until Doomsday.[210]

It is seen that Allah says in verse number 54 of Surat Mariam:

" وَٱذۡكُرۡ فِي ٱلۡكِتَٰبِ إِسۡمَٰعِيلَۚ إِنَّهُۥ كَانَ صَادِقَ ٱلۡوَعۡدِ وَكَانَ رَسُولٗا نَّبِيّٗا٥٤"

*“And mention in the Book, Ishmael. Indeed, he was true to his promise, and he was a messenger and a prophet(54)”* [Maryam: 54]

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[209] Ebn Katheer Abi Al-Feda Esmail ben Omar Al-Qarshi Al-Demashqi, *Tafsirul-Quranel-Azim* (As-Salamh Sami ben Mohammad, n.d.), https://archive.org/details/43005PDF/tqa8/mode/2up?view=theater. V 8 P 105

[210] Ebn Katheer Abi Al-Feda Esmail ben Omar Al-Qarshi Al-Demashqi, *Tafsir Al-Quran Al-Azim*, ed. As-Salamah Sami be Mohammad (Al-Read: Dar Taibah lelnashr wa At-tawzea, 1999), https://archive.org/details/43005PDF/tqa4/mode/1up?view=theater. V4 P 183

Ebn Jawzi says in the interpretation of "*he was true to his promise"* (كان صادق الوعد). This is generally between him and God and between him and people. Mujahid said, "He never promised his Lord unless he fulfils it."[211]

**Sunnah of the Prophet (Hadith)**

Prophet Mohammad PBUH says:

"آية المنافق ثلاث إذا حدث كذب وإذا وعد أخلف وإذا اؤتمن خان"

(There are three signs of hypocrisy: When he speaks, he lies. When he promises, he breaks them. When he is entrusted, he betrays it).

Prophet Mohammad PBUH also says,

" أربع من كن فيه كان منافقا خالصا ومن كانت فيه خصلة منهن كانت فيه خصلة من النفاق حتى يدعها إذا اؤتمن خان وإذا حدث كذب وإذا عاهد غدر وإذا خاصم فجر"[٢١٢]

There are four things; whoever has it is a pure hypocrite, and whoever has one of them had a trait of hypocrisy until he left it. If he is trusted, he betrays. When he talks, he lies. When he promises, he breaks it. When he fights, he is dissolute.

Above Hadiths (احاديث) are sahih (الصحيحة) (the most trusted) and denote that a promise must be fulfilled. The prophet Mohammad PBUH counts the breaking of the promise the characteristic of hypocrites (منافقين). Hypocrisy is illegal according to Islamic Sharia. It is reprehensible in custom, and it is detestable. That is why fulfilling a promise is an obligation, and breaking it is forbidden.

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[211] Al-Jawzi Al-Emam Abi Al-Faraj Jamaluddin Abdurrahaman fen Ali ben Mohammad Al-Qarshi Al-Baghdadi, *Zad Al-Masir Fi Elmu At-Tafsir* (Birot: Dar Ebn Hzm, 2002). P 888

[212] Al-bokhari Al-Jofi Mohammad ben Esmail abo Abdullah, *Al-Jame Al-Saheh Al-Mokhtasar (Saheh Al-BOkhari)*.- Ketabul Eaman- Bab Baian khesalul Monafeqe- Hadith NO58 V1 P21.

## II. Fulfilling the Promise is Mustahabb (مستحب):

It is the idea of the majority of Islamic jurists (جمهور الفقهاء) of the Hanafis[213], the Shafi'is[214], the Hanbalis[215], the Zaheris, and the Malikis[216]. They argue by using Hadith and analogy (قياس)

**Hadith**

"حَدَّثَنِى مَالِكٌ عَنْ صَفْوَانَ بْنِ سُلَيْمٍ أَنَّ رَجُلاً قَالَ لِرَسُولِ اللَّهِ -صلى الله عليه وسلم- أَكْذِبُ امْرَأَتِى يَا رَسُولَ اللَّهِ فَقَالَ رَسُولُ اللَّهِ -صلى الله عليه وسلم- « لاَ خَيْرَ فِى الْكَذِبِ ». فَقَالَ الرَّجُلُ يَا رَسُولَ اللَّهِ أَعِدُهَا وَأَقُولُ لَهَا فَقَالَ رَسُولُ اللَّهِ -صلى الله عليه وسلم- « لاَ جُنَاحَ عَلَيْكَ " .[٢١٧]

Malik told me on the authority of Safwan bin Sulaym that a man said to the Messenger of God - may God's prayers and peace be upon him. I lie to my wife, O Messenger of God. May God's prayers and peace be upon him. "There is no goodness in lying." The man said, O Messenger of God, I promise and say to it. The Messenger of God - may God's prayers and peace be upon him - said: There is no blame on you.

This indicates that the Prophet PBUH forbade a man from lying. As he negates a sin from the promise, the breach of the promise is not called a lie.

In another hadith prophet, Mohammad PBUH says

"إِذَا وَعَدَ الرَّجُلُ وَيَنْوِى أَنْ يَفِىَ بِهِ فَلَمْ يَفِ بِهِ فَلاَ جُنَاحَ عَلَيْهِ" [٢١٨]

When a man promises and intends to do it but cannot do it, there is no guilt on him.

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[213] Al-Kasani Alauddeen, *Badia Al-Sanaia*. V5 P232

[214] Al-Sarkhsi shamsuddin Abobakr Mohammad ben Abi Suhail, *Al-Mbsot*, ed. Al-miss khalil Mohaiuddin (Birot: Darul Feker leltbaate wa Al-Nashre, 2000), Al-Maktabatu Al-Shamelah.V4 P132

[215] Ahmad, *Omdatul Qari Sharhe Sahih Al-Bokhari*.V13 P222 & P366

[216] Ebn Hazm Abi Mohammad Ali ben Ahmad ben Saeed, *Al-Mhalla*. V8 P28

[217] Al-Asbahi Malik ben Anas abo Abdullah, *Moata Lel-Emam Malek*, ed. An-Nadawi Dr Taqiuddin (Damishq: Dar Alqalam, 1991), Al-Maktabatul Shamilah. V3 P365. Malik included it in the book of Al-Jame in the chapter of wich came in truth and falsehood (ما جاء فى الصدق و الكذب). Hadith No. 2828, V2 P588. Al-Iraqi said: It was narrated by Abd al-Bar in the preface from the narration of Safwan bin Salim from Ata bin Yasir.

[218] The clearance of the hadith is has done above.

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The above hadith shows that the prophet PBUH, took away the guilt from whoever promised but did not fulfill it. Therefore, fulfilling a promise is mustahabb (مستحب).

**Analogy (قياس):** The promise is like a donation or charity. It means that the charity is not binding unless it becomes handed[219].

**III. Fulfilling promise in some cases is binding, but in some cases, it is not binding**

Some scholars (*ulama*) associate the promise with reasons. The people who make a promise for relevant reasons are generally Maliki jurists. They are divided into two groups.

The first group's idea which is the preferred idea is prevalent in Maliki schools. Ebne Al-Qsem and Sahnoon also have the same idea[220]. The people who have this idea say that if someone links a promise to an act or a cause, and the promised person does it, the first one has to or is obliged to fulfill his promise. For example, when someone says to another, "Bulldozer your house, I will give you a good loan (without interest), "or say, "go to Hajj, and I will give you something." If the second person does these things, the first person should give him the things he promises.

The second group says that when someone links a promise to an act or a cause, he must fulfill it, even though the second party has done nothing [221].

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[219] As-Sakhawi Al-alaamah Ash-shaikh Mohammad ben Abdor-Rahman, *Eltmas As-Sad Fi Al-Wafa Bel-Wad*, ed. Ebn Al-Wahed Al-khamiss Dr. Abdullah (Ar-Riadh: Maktabatol- Abikan, 1997), https://backend.ketabonline.com/uploads/2020/04/1328233889045309372.pdf. P59

[220] Ar-Raini Mohammad Mohammad Al-Hatab Abdol-Llah, *Tahrir Al-Kalam Fi Masail Al-Altezam*, ed. Al-Sharif Abdos-Salam Mohammad, 1984, https://waqfeya.net/book.php?bid=9738. P 156-158.

[221] Al-Qarafi Shahabud-Deen, *Al-Forooq*, ed. Omar Hasnul-Qeeam (Birot: Moasesatu Al-Resalat, 2003).V4. P47-48

# CHAPTER III
# RESEARCH METHOD

## A. Introduction

The most important issue in every research is the method that is used in the research. There are many types of research. The research will find its goal easily and clearly if it uses the right and related method. On the other hand, if a nonrelated type of method is used, first, the researcher will lose his/her way, and after a long time and way, he/she will be tired and maybe leave the research or go to a place which is not the goal of his/ her research. This research is qualitative. That is why the researcher tries to use techniques suitable for qualitative research. In this research, the audience of the research is considered, so the research is organized accordingly.

## B. The Types of Research which are Considered in this Research

Social research could be conducted in different sizes and many shapes. Research could be organized in several ways: qualitative versus quantitative, experimental versus non-experimental, or case study versus cross-case research. In conclusion, it is possible to organize all the research along with five dimensions. See table 12.

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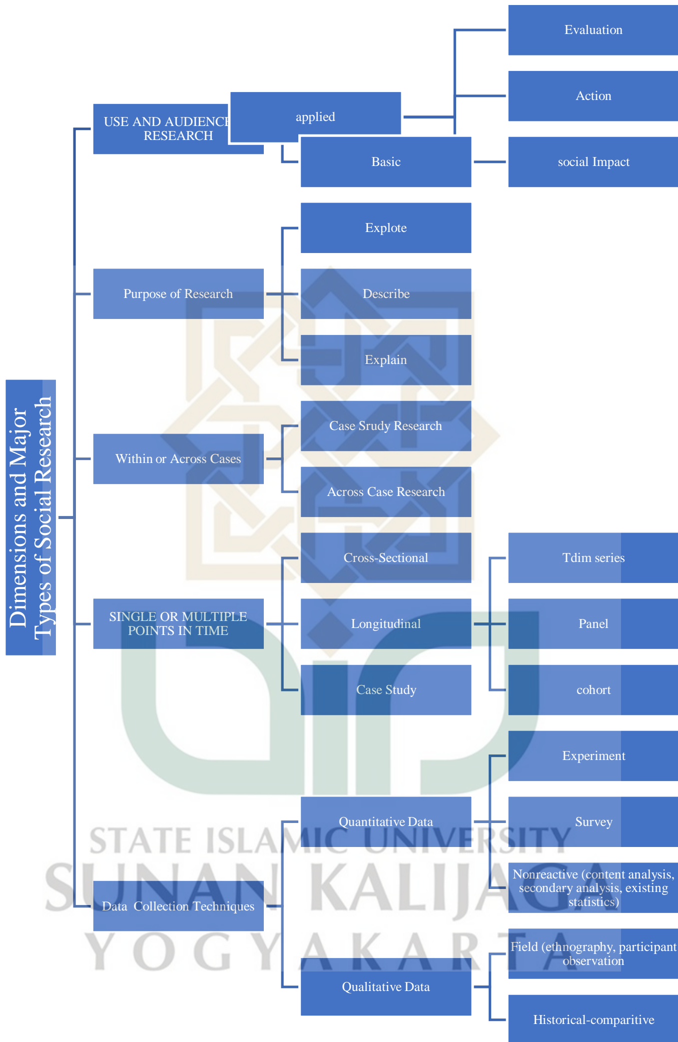
Table 12:

Dimensions and Major Types of Social Research




Sources: Neuman W. Lawrence, *Social Research Methods: Qualitative and Quantitative Approaches*[222].

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[222] Neuman W. Lawrence, *Social Research Methods: Qualitative and Quantitative Approaches* (United States of America: British Library Cataloguing-in-Publication Data A catalogue record for this book is available from the British Librar, 2014), www.pearsoned.co.uk%0A© Pearson Education Limited 2014. P26

The first research question is designed for fundamental exploratory research[223]. The first research question is: How is the practice of the Murabaha contract of Indonesian (BPRS of Yogyakarta), and is it in accordance with the Murabaha theory in classic Islamic texts? In other words, what is Murabaha, according to Islamic first-hand sources and classic jurisprudence? And what is it in the modern Indonesian concept? The answer to this question will give fundamental information about the issue. It is opening the door for the rest of the research questions and for other academic researchers to do research in this area if they want.

The answer to the first research question creates new questions predicted in the researcher's design of the present research. The question which is created by the answer to the first research question is “Which Islamic school (Madhab مذهب) is applied on Murabaha in Indonesian rural banks (BPRS) Yogyakarta?” This way, the research is switched from the fundamental and Exploratory research type to the descriptive one[224]. The second research question is a which-question, which is a descriptive research question.

The last research question is, “What are the determinants that make Islamic banks provide Murabaha products more than other products?” This question means, why are Murabaha contracts used more than other contracts in Indonesia's Islamic rural banking system?

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[223] The main purpose of exploratory type of research is to study a little-understood topic or phenomenon and to generate initial ideas about it and to move towards refined research questions. The Exploratory type of research sometimes open doors for new researches in the future. The Exploratory research addresses the question which is opened by (what) for Example: what is the X social action or activity really about?

[224] The primary purpose of a descriptive research is to use words or numbers to paint a picture, which presents an index, classifies types, or outline steps in order to answer the rest of the five golden questions (***who, when, where, and how***), and explain why something occurs. Both exploratory and descriptive types of research in practice blur together. The outcome of the study (in which both Explanatory and descriptive types are considered) is a detailed picture of the issue and the answer for the research questions.

This question asked by using a “why, " which is another descriptive research question. The literature tells us that the Murabaha contract is used more than other products of Islamic banks in Indonesia. This is why-question occurred as the researcher predicted it. It is also a descriptive research question.

## C. Case-study

This research is a case study research. Researchers can examine many features of a small number of cases through this study, such as geographic units, events, movements, organizations, groups, or individuals. The case-study is varied, extensive, and detailed. The case-study can focus for a duration of time on a single point. Usually, case-study is qualitative. Case study research is an in-depth study of a vast amount of information about units or very few items for a period or at multiple time intervals. The case study investigates one or a small group of cases, focusing on a lot of details in each case and context intensively.

Case-study has numerous strengths. Case-study clarifies the researcher’s thinking and allows them to link abstract ideas in specific ways with the concrete specifics of cases that the researcher observes in detail. Case studies show compound, multiple-factor events/situations and processes that happen over space and time. Case-study has many strengths. Below are the popular strengths.

Conceptual validity. A case study helps to “flush out” and recognize concepts/variables of most significant interest and move toward their essential meaning in abstract theory.

Heuristic impact. Case study research is highly heuristic. It helps construct new theories, extend or develop the concepts, and explore the boundaries among related concepts.

Causal mechanisms identification. Case studies have the potential to reveal the details of social processes and the mechanisms by which one factor influences others.

Ability to capture complexity and trace processes. Case-study can effectively depict highly complex, multiple-factor events/situations and trace processes over time and space.

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Calibration. Case studies make the researcher able to adjust events of abstract concepts to dependable, lived experiences and concrete standards.

Holistic elaboration. Case-study can holistically elaborate a process of the entire situation and permit the incorporation of numerous perspectives or viewpoints.

Due to the above reasons, the researcher chose a case study. On the other hand, the research primarily focuses on the qualities of the issue as the case study is mainly qualitative. The chosen organizations are Islamic rural banks (BPRS), and the area is limited to Yogyakarta.

## D. Single or Multiple Points in Time

Time is one of the dimensions of any study. It is considered in two ways, cross-sectionally and longitudinally. Cross-sectional research collects data over a period of time and creates a kind of "snapshot" of social life. Longitudinal research collects data over multiple periods and provides a more "moving picture" of events, people, or social relationships over time[225].

From the time point of view, this research focuses on the cross-sectionally type. This research looks at the present condition of Murabaha at the time of the research.

## E. Data Collection Techniques

The main data collection techniques are in two categories: Quantitative and Qualitative. This research mainly uses a qualitative data collection technique.

Qualitative data collection has a wide variety of formats, such as photos, maps, open-ended interviews, observations, and documents. But it can be simplified into two big categories; field research and historical-comparative research (sometimes called library research).

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[225] Neuman W. Lawrence, *Social Research Methods: Qualitative and Quantitative Approaches*. P45

## 1. Historical-Comparative Research

Historical-Comparative Research is defined as a collection of related types of research. Some researchers study aspects of the life of society in the past historical era. Other researchers study different cultures or compare cultures[226]. This research data was collected through historical-Comparative Research and Field Research techniques. First, the issue was seen in the classic jurisprudence books. It means that Murabaha was analyzed through history and compared to the new concept of Murabaha in BPRSs in Yogyakarta, Indonesia.

Researchers focus on one or several historical periods, compare one culture or more, or mix historical periods and cultures[227]. This research does the same thing. It describes Murabaha according to several historical periods of time. Then, it compares it to the new culture in BPRSs, such as modern banks.

The researcher started with a loosely formulated question with field research. Then he refined and elaborated on the question throughout the research process[228]. This research also started with a broader question of what Murabaha is. This question was answered according to four Islamic Suni Madhabs and the general Islamic jurisprudence, in which the result was compared to the fatwas of the Indonesian Council of Ulama.

The researchers use a mixture of documents, including existing statistics, documents (maps, photographs, books, newspapers, diaries, interviews, and observations[229]. This research did the same thing. The author mixed information from books, statistics provided by OJK and Islamic rural banks of Yogyakarta, and interviews.

Historical comparative studies are mainly descriptive but include exploratory and explanatory. This research did the same

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[226] Neuman W. Lawrence. P 45
[227] Neuman W. Lawrence.
[228] Neuman W. Lawrence.
[229] Neuman W. Lawrence.50

thing. It started with a description of the issue, then explored and, in the end, explained it.

**2. Field Research**

Field research is ethnographical research, which involves a small group of people. Field research starts with unformulated questions. A group or site is selected for the study. This way, access to a case is gained, and a social role is adopted in the setting and begins observing. In field research, the researchers carefully observe and interact with the issue for months to several years. In the field research process, the researchers get to know the people being studied personally by conducting informal interviews. The data are collected in the form of notes daily. Researchers consider what they observe and refine ideas of its significance. In the end, the researcher leaves the site, sees the notes, reviews them, and prepares to write the report. In short, the qualitative research field is where the researcher observes and records notes on people directly in a natural setting for an extended period of time.

The researcher of this study started the field research with an open question. The interviews were done in two ways: interviews with individuals and groups. The details is given in the following pages.

## F. Data Collection Process

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The data was collected through historical comparative research methods (or library research) and field research methods. For the historical-comparative data collection, first of all, the Islamic jurisprudence classic books in four Sunni madhhabs and the general jurisprudence (فقه العام) were observed. After that, the books of modern scholars were used. Then, the modern scholars' scientific articles published in valid journals were reread. The fatwas MUI (the Indonesian Ulama Councils) on Indonesian Islamic banks' products were also read. These sources were compared to each other, and the result was compared to the result of the field research. For the field data collection, three sites were chosen. They were Otoritas Jasa Keuangan OJK (Financial Services Authority), Bank Pembiayaan

Rakyat Syari'a BPRS (People's Financing Sharia Bank in Islamic rural banks of Yogyakarta), and the customers of BPRS Yogyakarta. Interviews were conducted at each site. In doing this, the researcher formed some questions in the form of questionnaires. First, some people in the OJK, and then in the BPRS were interviewed. In the last, some customers were chosen to get information.

For interviews with OJK, the questions were made earlier, and a group meetings interview did the interviews. In the meetings, four people from the authorities of OJK participated. OJK supervises and monitors BPRSs. The basic information about Islamic rural banks of BPRSs and their products, mainly in Yogyakarta, was obtained from the staff of the OJK.

The next step was the meeting with the BPRSs in Yogyakarta. First, the researcher delivered a short presentation of the research proposal at a conference of the directors and high positions staff of the BPRS of Yogyakarta in PT BPRS Madina Mandiri Sejahtera Syariah Bank on December 14. The researcher requested participants to help provide information about banks and their products. In this meeting, the researcher knew many people in different BPRSs, and they knew him. That was an excellent opportunity for conducting the research. In this meeting, 20 people participated. The pictures of this meeting can be seen in the appendix.

After this meeting, the researcher went to almost all BPRS to do interviews. The interview questions were made earlier in the form of a questionnaire. Afterward, the questionnaire was shared with the BPRS staff and the shariah advisory board before the interview. The answers were received in different forms; some banks sent the answers by writing answers for every question. Some sent records of their voice, and some gave time for direct interviews. The direct interviews were the most useful. Direct interviews were conducted with 8 BPRSs directors and Shariah advisory board members.

The most challenging part of data collection was getting information from the customers of the Islamic banks. The problems relate to the customers' availability and reluctance to share

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information. However, finally, the researcher got information through friends, Whatsapp groups, and direct interviews.

The language was the other researcher's problem. It was solved by using different ways. The officials talked in English or Arabic. The OJK staff talked in English. While Shariah advisory board members of the BPRSs spoke in Arabic, the directors of BPRSs spoke in English. Some Indonesian friends and the Language Center of State Islamic University Sunan Kalijaga (UIN) helped the researcher do the translation when needed. The data collected in the Indonesian language were the fatwas of DSN. Besides the Language Center, volunteer students of the International Office of State Islamic University Sunan Kalijaga (UIN) also contributed to assistance.

## G. Answering the Research Questions

Both library and field research were done to answer the first research question. This question is divided into two parts: Murabaha in classic Islamic jurisprudence and the modern concept of Murabaha in Shariah banks in Indonesia (Islamic rural banks in Yogyakarta).

To answer the first question, pure Historical-Comparative Research (library research) was conducted to understand the reality of Murabaha according to first-hand Islamic sources and Islamic jurists. As it is clear in all Islamic matters, first-hand sources (*Quran and Hadith*) are the most important, but obtaining clear information from these sources is not easy. As a result, the ideas and interpretations of Islamic scholars and jurists are necessary. The issue in secondary sources was searched deeply. The secondary sources were divided into six groups: four Sunni schools books, modern general jurisprudence (فقه العام), and maqasedu-Shariah books.

The data for the second part of the first research question was collected through both Historical-Comparative Research (library research) and field research. First, the fatwas of the Indonesian Council of Ulama about the banking Murabaha were analyzed. Some articles by modern scholars were also considered. At the same time, the information obtained through interviews with the OJK's staff and members of sharia supervisory boards of BPRSs and BSI was used.

First, the contract (عقد) and its conditions are interpreted. According to Islam, it is essential to know what contract is and the validity conditions. After that, Murabaha is interpreted according to each school, and the best interpretation is selected. Based on the interpretation, the rest of the research is conducted.

In order to answer the second research question, two kinds of information are needed. One was the result of Historical-Comparative Research (library research), and the other was the result of field research. In the field research, some interviews were conducted with the official OJK's staff, directors, and some staff of Islamic rural banks of Yogyakarta, the Shariah advisory board members, and the customer. The questions were made before doing interviews in the form of questionnaires. The issue was asked by using indirect questions. The answers were analyzed, and the result was compared with the idea of the Islamic classic and modern jurists. Both Historical-Comparative Research (library research) and field research methods were used to answer the second research question.

For the last research question, pure field research was done. A group interview was conducted with the staff of the OJK. Four official members of the OJK also participated. Based on the interview, many people in society were interviewed with unstructured questions in informal situation settings of friendship, public transportation, and shopping.

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## H. Conclusion

The type of research differs in 1) the use and audience of the research, 2) the purpose of the research, 3) the case study, 4) single or multiple points in time, and 5) data collection techniques. According to the research's use and audience, research is conducted in two ways. The first is fundamental research, which is also called academic research, and the second is applied research. Applied research has three types: evaluation applied research, action applied research, and social impact assessment applied research. All the types were considered as they were suitable to a specific part of the research and to the research-question-making process.

The purposes of research are organized into three parts: exploring a new topic (exploratory research), describing a social phenomenon (descriptive research), and explaining why something occurs (explanatory research). This research uses all of these purposes systematically. First, it explores the topic and then describes it before explaining it according to the research questions, literature, and field research.

A case study is one of the important types of research. It has many strengths because it has conceptual validity, Heuristic impact, causal mechanisms identification, ability to capture complexity and trace processes, calibration, and holistic elaboration. Due to the above strengths, the quotation of the case-study research type is chosen for the present research. BPRSs, OJK, and the BPRS's customers were chosen. The region of Yogyakarta is the area of the research case. In terms of time, the cross-sectionally type was used, and the present time of the research was chosen for the field research.

Regarding data collection techniques, researchers mostly used two categories: Quantitative and Qualitative. For this research, a qualitative data collection technique was used. A qualitative data collection technique is divided into two sub-categories: historical-comparative research and field research. In this research, both historical-comparative research and field research were used.

Both Historical-Comparative Research (library research) and field research were used to answer the research questions. The Historical-Comparative Research (library research) used first-hand Islamic law sources (Quran and Hadith) and secondary ones. The secondary sources were grouped into four Sunni Madhabs jurisprudence books, the general jurisprudence books, and the Maqasedul-Shariah books. The field research was conducted mainly in the form of interviews. OJK, BPRSs, and BSI of Yogyakarta Indonesia were chosen for the interviews. Some customers of the institutions were also interviewed.

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# CHAPTER IV
# DISCUSSION AND FINDINGS

## A. Indonesian Islamic Rural Banks BPRS.

BPRs conventional rural banks and BPRSs Islamic rural banks are typical Indonesian rural banks. There are two types of rural banks in Indonesia: *Bank Pembiayaan Rakyat* (BPR) and *Bank Pembiayaan Rakyat Syariah* (BPRS). OJK translated the BPR *Bank Pembiayaan Rakyat* to *The People's Credit Bank* and The BPRS *Bank Pembiayaan Rakyat Syariah* to People's Financing Sharia Bank.[230]

According to OJK, The People's Credit Bank (BPR) is a bank which doing commercial activities conventionally or based on the principles of Islamic Sharia law. When the BPR works based on the principles of Islamic Sharia, it is called BPRS and became an Islamic rural bank. Rural banks' activities are more limited compared to commercial banks. The rural banks are prohibited from accepting current account deposits, foreign exchange, and insurance activities.[231]

BPRs are primarily dedicated to supporting the development of the economy at the local level. Compared to commercial banks, most BPRs are smaller than commercial banks. BPRs play a significant role in financing small and micro enterprises. According to the regulation, the activities of BPRs, especially in granting loans, are limited within the boundaries of provinces and neighboring regions or municipalities. In addition, compared to commercial banks, BPRs have many limitations in doing their business. 1,666 BPRs operate in June 2021 in Indonesia. With the huge coverage in many cases, BPRs have become a prominent financial supporters for middle to low-income people. Considering the market segments by BPRs, they become strategic in improving local economic growth and decreasing problems such as disparity, poverty, and unemployment.[232]

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[230] Banking (ojk.go.id)

[231] Banking (ojk.go.id)

[232] Roberto, "Research on the Profitability of Rural Banks in Indonesia: A Comparative Study."

All Islamic banks and financial organizations have the same general limitation: they must operate according to Islamic rules. BPRSs also have other specific limitations. BPRSs share specific limitations with the BPRs. BPRs, in their activities, do not provide services in the payment movement, unlike Islamic commercial banks. Their activity is limited to a small area, but Islamic commercial banks do not have any limitations in this regard.

When comparing BPR and BPRS, according to the literature, the financial stability of Islamic rural banks is better than that of rural commercial banks. Even though the value of non-performance financials of Islamic rural banks is higher than rural commercial banks, Islamic rural banks have a lower risk of failure. The profit of Islamic rural banks is lower but more stable than rural commercial banks.[233]

### 1. Products of Islamic Rural Banks (BPRSs) in Indonesia

The products of Islamic banks are the most important issue because the result of a bank's efforts is its product. The product makes an Islamic bank different from a conventional one. Islamic banks of Indonesia provide more than seven kinds of products, according to the literature and the report of OJK.[234]

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[233] Widarjono, Agus Anto, "Is Islamic Bank More Stable Than Conventional Bank? Evidence From Islamic Rural Banks in Indonesia."

[234] OJK (*Otoritas Jasa Keuangan) (Statistik Perbankan Syariah)* is Sharia Banking Statistics. And the Sharia Indonesia Banking Statistic is a publication media that provides data regarding the Sharia banking industry in Indonesia. The SPS is published by Banking Licensing and Information Department monthly to give an overview of banking development in Indonesia. Start in May 2014, data of the SPS which is a collection of data Sharia Commercial Bank (BUS) and Sharia Business Unit (UUS) compiled sourced from the repart of BUS-UUS based on PBI No. 15/4/PBI/2013 about Monthly Repart on Monetary and Financial System Stability of Sharia Commercial Banks and Sharia Business Unit. Previously repart from BUS-UUS compiled based on PBI No. 26/5/PBI/2003 about Monthly Repart of Sharia Commercial Banks. In the December 2015, edition of the SPS, there are changes BUS-UUS data format. These changes to customize the data source previously Sharia Commercial Bank Monthly Repart (LBUS) became Monetary Stability Repart and Financial System (LSMK). To assist the reader in understanding this change, then the December 2015 edition has been equipped with matriculation of changes tables and metadata. Besides the change of format, there is also a change in the composition of the table so that the table BUS-UUS in tables 1 - 25. The BPRS table in table 26-

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Murabaha is used more than other products by Indonesian Islamic rural banks. The percentage of Indonesian Islamic banks' products from September 2019 to August 2020 published by OJK is as follows.

| | | |
|---|---|---|
| I. | Akad Murabahah | 45,80% |
| II. | Akad Musyarakah | 45,05% |
| III. | Akad Mudharabah | 3,22% |
| IV. | Akad Qardh | 2,62% |
| V. | Akad Ijarah | 2,46% |
| VI. | Akad Istishna | 0,61% |
| VII. | Others | 0,24% |
| | Total | 100,00 [235]. |

## B. The General Picture of Murabaha

Based on the literature, Murabaha can be seen from two points of view. The first is according to the classic jurisprudence, and the other is the new concept of Murabaha. The new form of Murabaha is called Murabaha Sale for Order. Murabaha is a permissible sale contract. Honesty and trust are the backbones of the Murabaha contract.

It is found that, according to the classic four Sunni Islamic schools, Murabaha is to sell something at the same capital that the seller has invested plus a clear and known profit. The classic and modern scholars state that Murabaha sale sells a commodity at the same price a person buys plus a known profit. However, he/she can add some expanses to the original price. That is why *capital invested* is used instead of the first price in the above definition.

### 1. Murabaha according to Indonesian Scholars

The Indonesian Council of Ulama in fatwa No. 04/DSN-MUI/IV/2000 concerning Murabaha, which seems to be the first fatwa of the Indonesian council of ulama about Murabaha, does not provide

47. Hopefully this change will provide more comprehensive information for stakeholders. file:///C:/Users/Salim%20Salim/Desktop/SPS%20D

[235] 2020, "No Title." OJK.

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any definition for Murabaha. Instead, it explains the process of applying Murabaha in Islamic banks, elaborated below.

I. Banks and customers must perform a free-of-usury Murabaha contract (*akad*)
II. Commodity traded must not be forbidden by the Islamic Law
III. Banks pay parts or all of the cost of the commodity in which its quality is agreed upon.
IV. The bank buys the items that the customer needs on behalf of the bank, and this purchase must be legal and free of usury.
V. Banks must state all matters related to purchases. An example is when the purchase is made on the debt.
VI. The Bank then sells the items to the customer at a selling price equal to the purchase price plus the profit. In this regard, the bank must honestly notify the customer about the cost of the items and the required cost.
VII. The customer pays the agreed price for the items within a certain agreed period of time.
VIII. To prevent misuse or damages of the contract (*akad*), the bank can make a specific agreement with the customer.
IX. If the bank wishes the customer to represent it to purchase goods from the third party, the Murabaha contract must be executed after the goods principally become the bank's property.

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But the fatwa NO. 16/DSN-MUI/IX/2000 of the Indonesian Ulama Council concerning discount in Murabaha defines Murabaha, as one of the basic principles in Murabaha, as the sale of an item to the buyer at the purchase price (*tsaman*) and the required costs plus profit according to the agreement.[236] From the Indonesian concept, the process and the definition of Murabaha are not different from those provided by the classic jurisprudence books.

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[236] National Sharia Board- INdonesiaan Council of Ulama, "DEWAN SYARI'AH NASIONAL," Pub. L. No. 16/DSN-MUI/IX/2000, 1 (2000).

Prof Dr. Mohammad[237] defines Murabaha etymologically. The term *Murabaha* comes from Arabic "*ribh*" which means profit or additional. So *Murabaha* is the sale and purchase of a commodity at a price equal to the cost of the commodity plus an agreed profit margin. Or Murabaha financing is based on buying and selling between the bank and the customer[238]. It is important to note that Dr. Mohammad uses the word *cost* instead of *price*. The following discussion will discuss the definition of the price of a commodity in Murabaha sale.

Al-Khudhari, a member of the shariah advisory board of Madina BPRS, says, "I see that there is no difference between Murabaha in jurisprudence books and the existence of Murabaha in Shariah banks of Indonesia. It is the same as the Murabaha existing in jurisprudence books (*Fiqh* books). For example, if a person wants to purchase an item, they propose to the bank. Then, the bank buys. After that, the bank sells it to the customer on credit. For example, some people cannot buy a car in cash, so they prefer to buy it by credit in monthly payment or for two or three years. They chose Murabaha, and there is some additional money as profit"[239].

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[237] MUHAMAD was born in Pati, Central Java. Completed S-1 studies at IKIP Neperi Yogyakarta (now UNY) in the field of Curriculum Development, S-2 at Masters in Islamic Studies UII Yogyakarta in Islamic Economics, S-3 at Doctoral Program in Economics UII Yogyakarta in Management (Islamic Finance). His career began with establishing the Yogyakarta Syari'ah College of Science (University of Islamic Economics in Indonesia) which is now the Yogyakarta Islamic Economics College (STEI Yogyakarta) as a lecturer and chairman. Until now, he is a permanent lecturer at STEI Yogyakarta, as well as an Extraordinary Lecturer in postgraduate programs at the Graduate School of UGM, UII, IAIN (Kudus, Purwokerto, Tulungagung), and others. Actively participates in seminars, workshops, discussions related to economic, financial, banking and sharia business issues. Also served on the Sharia Supervisory Board at PT. BPRS (Fund Hidayatullah, Danagung Syariah, Margirizqi Bahagia, Asad Alif). His social activities are as Chair of the Indonesian Mosque Council for the Special Region of Yogyakarta, Chairman of the Yogyakarta City Baznas, MES Expert Council, Central IAEI and Yogyakarta Special Region. Has published 79 books on economics, finance, banking and sharia business, including books published by UPP STIM YKPN, including: Sharia Bank Management, Islamic Business Ethics, Sharia Financial Management: Analysis of Figh and Finance, Sharia Bank Financing Management, Sharia Accounting: Theory and Practice for Sharia Banking

[238] Prof. Dr. Mohammad, interview on 25-12- 2021 at 4 o'clock.

[239] Khudhori Ahamad, Lc. Dewan pengawas Syariah Bank Madina Mandiri Sejahtera interview 27-Des 2021

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As it is seen, there are three types of Murabaha in the new concept (Murabaha sale for order/Banking Murabaha).

I. It is based on a non-binding promise between the two parties with no prior mention of the amount of the profit. It means that the customer wants to buy a specific commodity. He goes to the bank and says, "Buy this commodity for yourselves, and I have the desire to buy it at a deferred or accelerated price with a profit, or I will give you profit in it."

II. It is based on a non-binding promise between the two parties, indicating the amount of profit the bank will make. It means the customer wants to buy a specific commodity or something similar. He goes to the bank and says, "buy this commodity for yourselves, and I have the desire to buy it at a deferred or accelerated price, and I will give one thousand more than the capital."

III. It is based on a binding promise between the two parties. In this case, the client desires to buy a commodity or something with the same description. He goes to the bank, and both parties agree that the bank is obligated to purchase the commodity. The client is obligated to buy it from the bank, and the bank is obligated to sell to the client at a price they agreed upon in terms of the amount and profit.

**2. The Price of a Commodity in Murabaha Sale for Order**

The price of a commodity or an item is the essential thing in every sale. The price of other sales depends on the mutual agreement. There is no strong relation between this price and the price the seller bought. Nonetheless, in the Murabaha contract, the first price (the price the seller pays) is essential. Because principally, the definition of Murabaha is the selling of a commodity at the first price plus a known profit. Another thing that makes the price important in the Murabaha contract is that it is one of the honesty sales. That is why both parties must clearly know the first price.

It is important to define whether the first price is the amount of money the seller pays to the first seller or the amount the seller pays to the first seller, plus other expenses. Some expenses may be added,

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but some may not. All the expenses that bring positive changes directly to the commodity may be added to the price and the profit percentage. It must be understood that the expenses that do not bring any changes in the commodity could be added to the price but not to the profit percentage. According to the literature, he/she cannot add the price of services which he/she provided by himself, like cleaning by himself, driving by himself, safekeeping by himself, and so on. In other words, the first price of a commodity or an item is the amount of money the seller gives to the first seller plus the payable amount of the money.

### 3. Comparison of Murabaha in Classic and Modern Concepts

According to modern scholars, especially Indonesian scholars, Murabaha is not much different from classical jurisprudence. A slight difference between the two can be seen only in the process and application of Murabaha. Murabaha, which banks do, has a new structure or method. The new concept of Murabaha used by Islamic banks is called Murabaha Sale for Order. This new term was used for the first time by Dr. Sami Hammoud. The banks do not have items in their storehouses as the merchants do. The classic jurisprudence talks about Murabaha used by merchants or ordinary people, not by banks.

The merchants have commodities in their storehouses, and the customer chose them to buy. However, in banking Murabaha, the banks do not have the commodity; therefore, customers order for it. The customers may choose and give all the details of the item (including the company making it and the production date) to the bank and order it. At the same time, the customer promises that he/she will buy it. So first, the bank buys it, and the commodity becomes the bank's complete ownership. After that, the bank sells it to the customer. The bank also promises to buy the ordered commodity and sell it to the customer.

Indonesian Islamic banks also do not have commodities in their storehouses. Sometimes Islamic banks have partnerships or Memorandum of Understanding MOU with some companies and dealers. When a customer comes to the bank and orders a commodity, the bank immediately buys the proposed item from its counterparts

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and sells it to the customer. This process makes buying and selling easier and faster and decreases the risks[240].

a. **The Ruling of Murabaha in the Classic Jurisprudence and the New Concept of Indonesian Islamic Banks**

As seen in the literature and the field research, there are two types of Murabaha contracts. The first is simple Murabaha, defined in classic books, and the other is the new or the modern version of the Murabaha contract, which is called Murabaha Sale for Order, or Banking Murabaha in some literature. The simple Murabaha is permissible, and there is no dispute about its validity.[241] Al-Kasani mentions the consensus on the validity of the Murabaha sale[242]. As seen in the literature, there is a minor disagreement on the permissibility of the simple Murabaha sale. The disagreement that exists in Murabaha is slight. It is said that the sale of Murabaha is *makruh* (disliked), which is close to being valid. [243]This disagreement is narrated by Imam Ahmad, Ibn Umar, Ibn Abbas, al-Hasan, Masrooq, Ikrimah, Ata bin Yasar (may God have mercy on them). The people who consider the Murabaha contract as *makruh* argue that when the profit is on percentage (for example, as someone says: "I bought it 100 and sold it to you by that amount, and one in each ten will be my profit), there would be a kind of unclarity and the buyer must count it to know the last price. However, this uncertainty can be solved by a little counting. So, the simple Murabaha, or the classic written in all Sunni schools (Madhhab), is permissible.[244] The permissibility of this contract stands on three arguments:

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[240] OJK, grope interview 10 dec 2021

[241] Ebne Qodamah Abu mohammad mawfaqu-ddin Abdollah ben Ahmad ben Mohammad, *Al-Moghni Le-Abne Qodamah* (Al-Qahera: Maktabato Al-Qaherah, 1968), Al-Maktabato Al-Shamelah. V4 P136.

[242] Al-Kasani Alauddeen, *Badia Al-Sanaia*.V5 P202. & V7 P92.

[243] Us it was told above there a slight disagreement. I mean by slight – there is not big disagreement about to be halal or haram. All say that it is Jaaez, or Mabah, but a small number do not like it.

[244] Bakr ben Abdullah, *Feqhul-Nawazel* (Moasesatu Al-Resalat, 1996), Al-Maktabatul Al-Shamilaha. V2 P68.

I. It is permissible based on the general permissibility of sale contracts.
II. It is unanimity. People have been using it for different periods of time and in various cities without any doubt.
III. It is reasonable and logical. First, society has an urgent need for this kind of sale. Secondly, the one who is not good at bargaining in the sale can rely on the other's capability to bargain.[245]&[246]

Based on the above discussion, the result of the literature, and the field research, the ruling of the Murabaha sale for the order is as follows. Even though many scholars have considered the sale of the Murabaha sale for order as one of the new issues of the present age, examples of Murabaha sale for order are found in the books of classical scholars. The new researchers base their ideas on the books of classical scholars. There are some examples of existing Murabaha sales for orders in the classical texts.

In Hanafi school (Madhab), Muhammad ben Al-Hasan Al-Shaibani in his book *Ah-Heal* says:

"أرأيت رجلاً أمر رجلاً أن يشتري داراً بألف درهم وأخبره أنه إن فعل اشتراها الآمر بألف درهم ومائة درهم فأراد المأمور شرى الدار ثم خاف إن اشتراها أن يبدو للآمر فلا يأخذها فتبقى الدار في يد المأمور كيف الحيلة في ذلك؟ قال يشترى المأمور فيقول له قد أخذت منك هذه الدار بألف درهم ومائة درهم فيقول له المأمور هي لك بذلك فيكون ذلك للآمر لازماً ويكون استيجاباً من المأمور للمشتري"[٢٤٧]

"Have you seen a man who ordered another man to buy a house for a thousand dirhams? And as he did, the ordering man

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[245] Al-Sawi, "Final Murabaha Contract and Its Contemporary Applications."P2

[246] The idea of Ibn Hazm - which says that the Murabaha sale contract is not permissible and the contracts which are contracted through Murabaha are void – is not valid. He is arguing that the price in this sale is not clear enough, and there is a condition in Murabaha sale, which is not found in Quran, so Murabaha sale contract is void. This argument is rejected, because the price will be clear enough in less than a minute by counting, especially by the modern high-tech. And the condition of profit (if you give me profit like this or that) is not found in Quran, is also rejected, that this condition is not inconsistent with the nature of contract, and it is not involved with any illegality so it could not be an argument for blocking this sale (Murabaha).

[247] Al-Shaibani Mohammad ben Al-Hasan, *Al-Makharej Fi Al-Heal* (Maktabato Al-Thaqaafato Al-Diniah, 1999), https://waqfeya.net/book.php?bid=11989.P 4o

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would buy it for a thousand and one hundred dirhams. The person who received the order wanted to buy the house, but he was afraid that, if he bought it, the ordering person did not take it. The house would remain in the hands of the commanded man. What kind of trick could be used?" He said in the answer: "the commanded man may buy the house with three-days-return rights", so the person who ordered the house came and said: "I have taken the house from you for a thousand and a hundred dirhams." The commanded man says: "Now it is yours. So, it became necessary for the ordering man to take it. The commanding person must not start the sale because, in that case, his return right to the first seller will be gone, and if the ordering person does not like the house, the risk is that the house will remain in his hand. But if he keeps the return right, it will help him avoid the risk. From the above example, it is understood that the Murabaha sale for an order is permissible, but the promise is not binding in the Hanafi school (*Madhab*).

The classical scholars of the Maliki school talk about the Murabaha sale for an order under the name of *bai aiena* ( بيع عينة). Ibn Roshd divides the ruling of Murabaha sale for order into three types: permissible (جائز), disliked (مكروه), and forbidden (حرام) [248]. It is described in Tables 14, 15, and 16.

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[248] Iben Roshd Mohammad ben Ahmad Al-Qortobi Abu Al-Walid, *Al-Moqadimat Al-Almomahedat*, ed. Hji Mohammad, 1998, https://waqfeya.net/book.php?bid=9739.

Table 13
Ruling of Murabaha sale for the order according to Maliki school

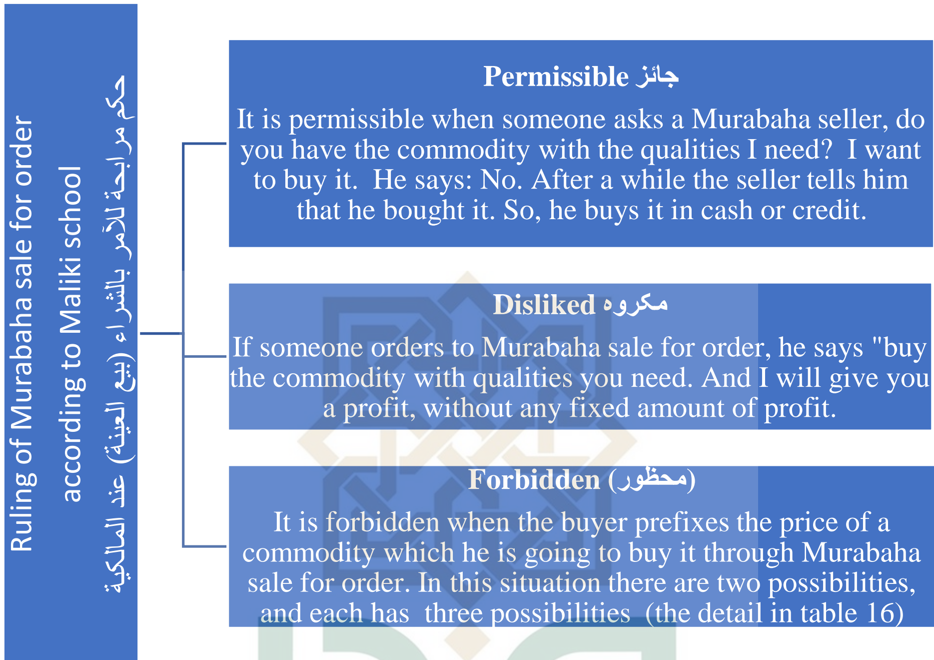


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Table 14
Forbidden (محظور) Murabaha sale for the order according to Maliki schools

<table>
<tr><td colspan="3">When the buyer prefixes the price of a commodity, he will buy through Murabaha sale for order.</td></tr>
<tr><td colspan="3">The first possibility is when the buyer says, “buy it for me” (اشتر لى)</td></tr>
<tr><td>When someone says to the Murabaha seller: “buy for me a commodity at twelve by credit, and I will buy it from you at ten by cash.”</td><td>When someone says to the Murabaha seller: “buy for me a commodity at ten by cash, and I will buy it from you at twelve by cash.”</td><td>Someone says to the Murabaha seller: "buy for me a commodity at ten by cash, and I will buy it from you at twelve by credit.”</td></tr>
<tr><td>. in this case, the sale is forbidden (haram)</td><td>In this case, the person who receives the order is an employee of the sale, with two as the service charge. And the sentence (I will buy it) is canceled and does not have meaning. Unless, if the money is in cash, it is permissible.<br>However, if the money is cash with a certain condition, it is corrupted hiring. (اجارة فاسدة)</td><td>In this case, the sale is forbidden, it is not permissible because the extra money is used to substitute the length of time, which is considered usury. If it happens, the commodity ownership must go to the person who orders, because it is bought for him. And he must pay 10 only, in cash.</td></tr>
</table>

Source: [249] Maliki books analyzed by the researcher

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[249] Al-Moqadimat Al-Almomahedat,

Table 15

The forbidden (محظور) Murabaha sale for the order according to Maliki schools

| The second possibility is to say: buy it for yourself (اشتر لنفسك) | | |
|---|---|---|
| Someone says to the Murabaha seller, "Buy it for yourself for twelve in credit, and I will buy it from you ten in cash." | Someone says to the Murabaha seller: "buy the commodity with the qualities I need for 10 in cash, and I will buy it from you for 12 in credit." | Someone says to the Murabaha seller, "buy commodity the commodity with the qualities I need for 10 in cash, and I will buy it from you for 12 in cash. " |
| Sahnoun ↓ narrated from Ibn al-Qasim that the commodity is not returned if it is destroyed, and only ten is paid to the one who orders it. Ibn Habib said: The second sale is annulled in any case, as it is done with the forbidden sale because it sells something before being owned by the one who receives the order. | It is also forbidden, ↓ but if it happens, there is disagreement. Sahnun narrated from ibn A-Qasem and Malik: the ordering person is obliged to buy for twelve by credit. It is because the receiver of the order is the guarantor when the commodity is damaged before the ordering person buys it. If the ordering person does not want it, the commodity is still his ownership. It is desirable for the one commanded to be prudent so he will not take orders from the one commanding anything except what he has estimated for its price. And Ibn Habib says: the second sale is void and the commodity must be returned to the commanded person. If the commodity is damaged, its price must be paid in cash. | Imam ↓ Malik (may God have mercy on him) considered it permissible and disliked because the contract takes place before the ownership. |

Source: [250] Maliki books analyzed by the researcher

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The result is that the promise is not binding in Maliki schools.
Imam Shafi'i, in his book *Al-om* says:

" إِذَا أَرَى الرَّجُلُ الرَّجُلَ السِّلْعَةَ فَقَالَ اشْتَرِ هَذِهِ وَأُرْبِحْك فِيهَا كَذَا فَاشْتَرَاهَا الرَّجُلُ فَالشِّرَاءُ جَائِزٌ وَاَلَّذِي قَالَ أُرْبِحْك فِيهَا بِالْخِيَارِ إنْ شَاءَ أَحْدَثَ فِيهَا بَيْعًا، وَإِنْ شَاءَ تَرَكَهُ وَهَكَذَا إنْ قَالَ اشْتَرِ لِي مَتَاعًا وَوَصَفَهُ لَهُ أَوْ مَتَاعًا أَيَّ مَتَاعٍ شِئْت وَأَنَا أُرْبِحْك فِيهِ فَكُلُّ هَذَا سَوَاءٌ يَجُوزُ الْبَيْعُ الْأَوَّلُ ... وَيَكُونَانِ بِالْخِيَارِ فِي الْبَيْعِ الْآخَرِ، فَإِنْ جَدَّدَاهُ جَاز وَإِنْ تَبَايَعَا بِهِ عَلَى أَنْ أَلْزَمَا أَنْفُسَهُمَا الْأَمْرَ الْأَوَّلَ فَهُوَ مَفْسُوخٌ مِنْ قِبَلِ شَيْئَيْنِ: أَحَدُهُمَا: أَنَّهُ تَبَايَعَاهُ قَبْلَ أَنْ يَمْلِكَهُ الْبَائِعُ وَالثَّانِي أَنَّهُ عَلَى مُخَاطَرَةِ أَنَّك إنْ اشْتَرَيْتَهُ عَلَى كَذَا أُرْبِحْكَ فِيهِ كَذَا[٢٥١]"

If a man shows another a commodity and says, "buy this, and I will give you this certain amount of profit." So, the second man bought it, so this sale is valid. But the first one (who says: buy this) has two opportunities if he still wants the commodity, they can make a new contract, and if he does not want it, he can leave it. Also, if someone says to another buy for me a commodity or tells him its descriptions, or anything you want and I will give you, so all of them are the same, the first sale is permissible, and about the second sale, both parties have the right to make a new contract or leave it. If they make the second sale based on the obligation of the first contract, it is void in two ways; first, they will make the contract about something before owned. The second is under the risk that if you bought it, I will give you profit like this or that. As a result, according to Shafi'i Madhab, the promise is also not binding.

These are the ideas and texts of Islamic jurists about this jurisprudential issue Islamic banks get and use in their daily activities and in dealing with their clients to be the replacement for the usurious products of conventional commercial banks. From the above discussion, the following rules are found.

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[250] Al-Moqadimat Al-Almomahedat,

[252] Al-Shafai Al-Amam Mohammad ben Edris, *Al-Om*, ed. Al-Najar Mohammad Zohdi (Al-Qahera: Maktabato Al-Azhariah, 1981) V3 P39.

[251] Al-Shafai Al-Amam Mohammad ben Edris, *Al-Om*, ed. Al-Najar Mohammad Zohdi (Al-Qahera: Maktabato Al-Azhariah, 1981) V3 P39.

I. The first situation is based on the promise between the two parties - which is not binding, with no prior mention of the amount of profit and compromise. It appears permissible according to the Hanafis, the Malikis, and the Shafi'is. There is no obligation to fulfill the promise, and there are no changes in getting compensation for damage. So, there is no compensation to the bank's client, so the bank gets the risk because it buys the commodity for itself, and the bank does not know if the client gets the item or not, and that much possible risk makes the contract permissible.

II. The second situation stands on the nonobligatory promise from both parties, but the amount of the profit is cleared. In this situation, it seems to be forbidden, as it seems in the speech of Ibn Roshd in Malikiah.253

III. The third situation stands on the obligatory promise from both parties before the bank owns the commodity. It is by the clearing of the profit and choosing a party to get compensation of the commodity's possible damages It is forbidden and unlawful (حرام), so it is like a usurious loan. It is unlawful because of the following reasons.

   i. In reality, it is a contract through which the bank wants to give the ownership of a commodity to someone else before it actually owns the commodity and settles in its ownership.

   ii. The hadiths of the Prophet Muhammad PBUH have a general meaning, which stipulates the prohibition for someone to selling items he does not have. Hadith Ibn Hezam is used as evidence:

   "بْنِ حِزَامٍ قَالَ: أَتَيْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ: يَأْتِينِي الرَّجُلُ يَسْأَلُنِي مِنَ الْبَيْعِ مَا لَيْسَ عِنْدِي، أَبْتَاعُ لَهُ مِنَ السُّوقِ، ثُمَّ أَبِيعُهُ؟ قَالَ: «لَا تَبِعْ مَا لَيْسَ عِنْدَكَ»[254]
   "

   Ibn Hezam said: I came to the Messenger of Allah PBUH, and I said: "a man came to me, and he wanted to buy something I do

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[253] Abo Zaid Bakr ben Abdullah, *Feqhul-Nwazil* (Musasatu Al-Resalah, 1996), Al-Maktabatul-Shamilah.V2 P٩٠.

[254] Al-Tirmizi Mohammad ben Aesa ben Sawrat ben Musa ben Ad-dhak, *Sunan Al-Termezi*. Hadith No1232. V3 P526. Maktabatul-Shamilah.

Al-Albani says this Hadith is Saheh.

not have. Should I buy it from the market and sell it?" He said, "Do not sell what you do not have." The prohibition is driven by the uncertainty of the ability to deliver the commodity on time.[255]

There is another Hadith from Ibn Omar (may God bless him) «لَا يَحِلُّ سَلَفٌ وَبَيْعٌ، وَلَا شَرْطَانِ فِي بَيْعٍ، وَلَا رِبْحُ مَا لَمْ يُضْمَنْ، **وَلَا بَيْعُ مَا لَيْسَ عِنْدَكَ**»[256]

Ibn Qaiem Al-Jowzi says: -

" وَهُوَ يَتَضَمَّنُ نَوْعًا مِنَ الْغَرَرِ، فَإِنَّهُ إِذَا بَاعَهُ شَيْئًا مُعَيَّنًا، وَلَيْسَ فِي مِلْكِهِ، ثُمَّ مَضَى لِيَشْتَرِيَهُ، أَوْ يُسَلِّمَهُ لَهُ، كَانَ مُتَرَدِّدًا بَيْنَ الْحُصُولِ وَعَدَمِهِ، فَكَانَ غَرَرًا يُشْبِهُ الْقِمَارَ، فَنُهِيَ عَنْهُ"[257]

"And it contains a kind of uncertainty. When a person sells a certain item but does not have it, he goes to buy it and delivers it to the buyer. At the same time, he is hesitant between having it and not. It is uncertain and resembles gambling; therefore, the prophet Mohammad PBUH prohibits it.

iii. Some scholars believe that it is forbidden because it is nonexistent. It is said that the sale of nonexistent things is forbidden according to the hadith of prophet Mohammad PBUH, who forbids the selling of nonexistent things. However, this hadith is not known in the books of hadith.[258]

iv. Al-Khetabi says, what it means to the Prophet PBUH by saying, "do not sell what you do not have. It is not the situation but the commodity; as it is previously explained, he allowed the *Salam* (سلم) for the future, which is also a sale of not-owned items (the non-existent item in the hand of the seller at the moment). The Prophet PBUH did not prohibit non-present-commodity sales due to their nonexistence, but because of its uncertainty, like

[255] Adh-Dharir Ad-Doktor As-Sadiq Mohammad Al-Amin, *Al-Ghararo Wa Atharoho Fi Al-Aoqod Fi Al-Fiqh Al-Islami* (Birot: Darul-Jeel, 1990), https://ia804508.us.archive.org/17/items/fiqh11001/fiqh11460.pdf. P 319

[256] Termadhiah says this Hadith is Hasan Sahih (حسن صحيح).

[257] Ibn Qaim Al-JawZi Mohammad ben Abi Bakr ben Auob ben Sad Shamu-Deen, *Zad Al-Maad Fi Handi Khairul-Aebad* (Birot: Maktabato Al-Monar, 1994), Almaktabatul-Shamilah. V5 P 716

[258] Bakr ben Abdullah, *Feqhul-Nawazel*. V2 P92

selling a runaway camel. It has conditions out of the seller's control. For example, as a man buys a commodity and sells it before having it in hand, or as he sells others' commodities without their permission, he sells a commodity he does not own. This means there is uncertainty about whether the owner will allow selling or not [259].

v. Generally, Hadiths forbid selling not-in-hands items. Al-Nwawi (ابو زكريا محيى الدين يخيى بن شرف النووى المتوفى ٦٧٦هـ ) wrote in his book *Al-Majmoa Sharhul-Mohazab (Ma Takmelatu-Ssabki Wa Al-Matiai)* (*المجموع شرح المهذب ››مع تكملة السبكى و المصيفى*)) [260]. It is narrated from Ibn Abbas that he says, "as for what the Prophet PBUH forbids, is selling the food until or before it is in hands. Ibn Abbas says, "I consider everything is like it (food)." Al-Bokhari and Muslim narrate it. According to the narration of Abu Huraira (may God be pleased with him), Prophet PBUH said, "Whoever buys food, let him not sell it until he measures or weighs it, narrated by Muslim. Moreover, in a narration, he said the Messenger of God (may God bless him and grant him peace) forbids the sale of food until it is entirely under control. [261]

Ibn Al-Manzr, and Khatabi, and Ibn Al-Qaiem and other scholars say that there is unanimity (اجماع) about it (as someone buys food but cannot sell it unless the food is in hands).

Ibn Abbas and Mohammad ben Al-Hasan believe that selling items that someone buys before he gets them in his hands

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[259] Al-Khatabi Abo Selaiman Hamd ben Mohammad ben Ebrahim ben Khatab Al-Basti, *Maalemus-Sonan* (Halab: Al-Matbatul- Al-elmiah, 1932), Al-Maktabtul-Shamilah. V3 P140

[260] وَعَنْ ابْنِ عَبَّاسٍ قَالَ أَمَّا الَّذِي نَهَى عَنْهُ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَهُوَ الطَّعَامُ أَنْ يُبَاعَ حَتَّى يَقْبِضَ قَالَ ابْنُ عَبَّاسٍ وَأَحْسِبُ كل شئ مِثْلَهُ) رَوَاهُ الْبُخَارِيُّ وَمُسْلِمٌ وَفِي رِوَايَةٍ لِمُسْلِمٍ عَنْ ابْنِ عَبَّاسٍ قَالَ (قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ مَنْ ابْتَاعَ طَعَامًا فَلَا يَبِعْهُ حَتَّى يقبضه قال ابن عباس وأحسب كل شئ بِمَنْزِلَةِ الطَّعَامِ) وَعَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ عَنْ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ (مَنْ اشْتَرَى طَعَامًا فَلَا يَبِعْهُ حَتَّى يَكِيلَهُ) رَوَاهُ مُسْلِمٌ وَفِي رِوَايَةٍ قَالَ (نَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وسلم عن بَيْعِ الطَّعَامِ حَتَّى يُسْتَوْفَى)

[261] Al-Nawawi Yahia ben Sharaf ben Mari ben Hasan Al-hazmi Al-Horani Al-Nawawi Al-Shafiai Abo Zakaria Mohaiuddin, *Al-Majmoa Sharhul-Mohazab (Ma Takmelatu-Ssabki Wa Al-Matiai)* (Darul Feker, n.d.), Al-Maktabatul-Shmelah. V9 P271

(non-food, such as measured items or weighed items, or real estate), according to a narration from Ahmad, is permissible. Ibn Abbas and Mohammad ben Al-Hasan believe (and according to a narration from Ahmad) have a similar perspective. Ibn Qaiem also prefers it. The researcher stands in the same position, too. Ibn Al-Qaiem (may God have mercy on him) discussed the reasons for prohibiting the not-in-hand-items sales. As the texts are explicitly and authentic from the Prophet PBUH, the prohibition toward the sale of not-in-hand items, because of the lack of complete seizure in the ownership of the seller, so it is not permissible for a bank to sell a commodity which the bank does not own the items in reality.[262] That is why prohibition is better than permission. Selling a thing before receiving and handing it is like selling money by money, which is unlawful. The above Hadiths mention only *food*, yet scholars believe that the prohibition covers both food and nonfood[263].

vi. There is uncertainty (*Gharar*) which is forbidden without any doubt. The commodity is non-existent, and it is not known whether it will be handed in on time or not. In this case, the seller is not sure whether he will receive the commodity on time or not. Therefore, the buyer is at risk. This sale is forbidden not for being non-existent but uncertain. When the seller sells what is not in his possession and cannot deliver it, he will find to deliver the item to the buyer. This is similar to gambling.

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Opponent's point of view: It is clear from the previous discussion that there is no disagreement between the opinions of scholars that the sale in the third situation is invalid. Recently, many books have been written about the issue of Murabaha, where debates between its permissibility and prohibition are found. The people who permit this issue - (it stands on the obligatory promise from both parties before complete ownership of the bank on the commodity with the clearing

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[262] Abo Zaid Bakr ben Abdullah, *Feqhul-Nwazil*.V2 P93

[263] Adh-Dharir Ad-Doktor As-Sadiq Mohammad Al-Amin, *Al-Ghararo wa atharoho Fi Al-Aoqod Fi Al-Fiqh Al-Islami*. P329 – 330.

of the profit and choosing a party to get compensation of the possible damages of the commodity) – argue as following:

I. The promise is obligatory, and the commodity is needed in reality, which is the buyer's goal in this contract. The contract is genuine and not fictitious, as the customer intends to benefit from the commodity and does not want it to reach the money in the cash he needs.

II. The prohibition of selling not-in-hand items at the time of the contract is only for the commodity that must be delivered at present time. But if the delivery of the commodity is at the future exact and known time, it is not forbidden. So, in this case, the rule of sales for the future (بيوع الآجال) is applied.

III. The prohibition of selling of non-existence commodity ( بيع المعدوم) is about the commodity whose existence is unknown in the future. However, in our present or present situation, the commodity usually exists in the future and is used to exist in the future264. Moreover, in this case, if the buyer delays the payment of the money, the amount of money will not increase.

IV. The demand in daily dealings needs this kind of sale, as it needs the *Salam* (سلم) and Istisna (استصناع), so the uncertainty is tolerated due to appreciation of the need. The need here in modern human life calls for expanding the scope of dealings and inflating the capital and facilities needed in corporations, like machines and buildings that corporations cannot operate without. So, when this sale is not made, the interests and the welfare of the needy Muslim society will be lost. These needs will let Muslims go toward (القرض بفائدة), which the religion keeps them away from this kind of deal (*usury*). So it is better that this dealing happens under the pressure of the need. That will help the Muslims to be far from certain unlawful (حرام) contracts and

[264] Adh-Dharir Ad-Doktor As-Sadiq Mohammad Al-Amin.P358.

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dealings, and the interest and welfare of the Muslim society will be saved and to be increased.

It was the Murabaha which is found in Islamic Fiqh books in the chapters of sales (كتاب البيوع) of these books. But this research aims to compare it to the new version of Murabaha, which is used today in Islamic banks of Indonesia, that modern scholars call Murabaha sale for order (بيع المرابحة للآمر بالشراء).

According to the ruling of Murabaha and promise in the fatwas of Indonesian cancel of Ulama, Murabaha is permissible according to fatwa NO. 04/DSN-MUI/IV/2000 of Indonesian Council of Ulama. National Sharia Board – Indonesian Council of Ulama stands its fatwa NO. 04/DSN-MUI/IV/2000 on Quran, Hadith, and Ajma.

Al-Quran:

(يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ لَا تَأۡكُلُوٓاْ أَمۡوَٰلَكُم بَيۡنَكُم بِٱلۡبَٰطِلِ إِلَّآ أَن تَكُونَ تِجَٰرَةً عَن تَرَاضٖ مِّنكُمۡۚ وَلَا تَقۡتُلُوٓاْ أَنفُسَكُمۡۚ إِنَّ ٱللَّهَ كَانَ بِكُمۡ رَحِيمٗا٢٩)

"O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent". And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful(29)" [An-Nisaa: 29]

(ٱلَّذِينَ يَأۡكُلُونَ ٱلرِّبَوٰاْ لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ ٱلَّذِي يَتَخَبَّطُهُ ٱلشَّيۡطَٰنُ مِنَ ٱلۡمَسِّۚ ذَٰلِكَ بِأَنَّهُمۡ قَالُوٓاْ إِنَّمَا ٱلۡبَيۡعُ مِثۡلُ ٱلرِّبَوٰاْۗ **وَأَحَلَّ ٱللَّهُ ٱلۡبَيۡعَ وَحَرَّمَ ٱلرِّبَوٰاْۚ** فَمَن جَآءَهُۥ مَوۡعِظَةٞ مِّن رَّبِّهِۦ فَٱنتَهَىٰ فَلَهُۥ مَا سَلَفَ وَأَمۡرُهُۥٓ إِلَى ٱللَّهِۖ وَمَنۡ عَادَ فَأُوْلَٰٓئِكَ أَصۡحَٰبُ ٱلنَّارِۖ هُمۡ فِيهَا خَٰلِدُونَ٢٧٥)

"Those who consume interest cannot stand [on the Day of Resurrection] except as one stand who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." **But Allah has permitted trade and has forbidden interest**. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns to [dealing in interest or usury] - those are the companions of the Fire; they will abide eternally therein(275)" [Al-Baqara: 275] on the other word and

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Alloh has made lawful (*halal*) trading and forbidden usury

(**يَاأَيُّهَا ٱلَّذِينَ ءَامَنُوٓاْ أَوۡفُواْ بِٱلۡعُقُودِۚ** أُحِلَّتۡ لَكُم بَهِيمَةُ ٱلۡأَنۡعَٰمِ إِلَّا مَا يُتۡلَىٰ عَلَيۡكُمۡ غَيۡرَ مُحِلِّي ٱلصَّيۡدِ وَأَنتُمۡ حُرُمٌۗ إِنَّ ٱللَّهَ يَحۡكُمُ مَا يُرِيدُ١)

"**O you who have believed, fulfil [all] contracts**. Lawful for you are the animals of grazing livestock except for that which is recited to you [in this Qur'an] - hunting not being permitted while you are in the state of *ihram*. Indeed, Allah ordains what He intends(1)" [Al-Maidah: 1]

(**وَإِن كَانَ ذُو عُسۡرَةٖ فَنَظِرَةٌ إِلَىٰ مَيۡسَرَةٖۚ** وَأَن تَصَدَّقُواْ خَيۡرٞ لَّكُمۡ إِن كُنتُمۡ تَعۡلَمُونَ٢٨٠)

"**And if someone is in hardship, then [let there be] postponement until [a time of] ease.** But if you give [from your right as] charity, then it is better for you if you only knew(280)" [Al-Baqara: 280]. In other words, "**And if the debtor is in trouble, then give him respite until he is abundant….**"

**Hadith of the Prophet PBUH:**

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ، يَقُولُ: قَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ» (رواه بيهقي و ابن ماجه و صححه ابن حبان)

Narrated by Abu Sa'id Al-Khudri that The Messenger of Allah said, "Indeed, buying and selling must be done on a consensual basis." (Narrated al-Baihaqi and Ibnu Majah, and assessed as authentic (*shahih*) by Ibnu Hibban).

قَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «ثَلَاثٌ فِيهِنَّ الْبَرَكَةُ، الْبَيْعُ إِلَى أَجَلٍ، وَالْمُقَارَضَةُ، وَأَخْلَاطُ الْبُرِّ بِالشَّعِيرِ، لِلْبَيْتِ لَا لِلْبَيْعِ» (رواه ابن ماجه عن صهيب)

"The Prophet said, 'there are three things that contain blessings: buying and selling not in cash, *muqaradhah* (*mudharabah*), and mixing wheat with barley for household purposes, not for sale." (narrated Ibn Majah from sohaib)

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الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ، إِلاَّ صُلْحًا حَرَّمَ حَلاَلاً، أَوْ أَحَلَّ حَرَامًا، وَالمُسْلِمُونَ عَلَى شُرُوطِهِمْ، إِلاَّ شَرْطًا حَرَّمَ حَلاَلاً، أَوْ أَحَلَّ حَرَامًا. (رواه الترمزى عن عمرو بن عوف)

"Peace can be made between Muslims except for peace which forbids what is lawful (*halal*) or makes *halal* what is unlawful (*haram*)" (narrated Tirmizi from 'Amr bin 'Auf).

مَطْلُ الْغَنِيِّ ظُلْمٌ

Hadith of the Prophet narrated by *jama'ah* (many people): "Procrastinating (payments) made by people who can afford is an injustice…."

لَيُّ الْوَاجِدِ يُحِلُّ عِرْضَهُ، وَعُقُوبَتَهُ

Hadith of the Prophet narrated by Nasa'I, Abu Dawud, Ibnu Majah, and Ahmad: "Procrastinating (payments) made by people who can afford to justify self-esteem and give sanction to them."

انه سئل رسول الله صلى الله عليه وسلم عن العربان فى البيع فاحله[٢٦٥]

Hadith of the Prophet narrated by 'Abd al-Raziq from Zaid bin Aslam: "The Messenger of God was asked about '*urbun* (down payment) in buying and selling, so he made it lawful (*halal*)."

A. Jurisprudential basis rule:

الاصل فى المعاملات الاباحة الا ان يدل دليل على تحريمها

"Basically, all forms of *muamalah* (sale contracts) can be done except there is a *dalil* (reason) that forbids it."

[265] There are many Hadith that are in contradiction with this Hadith for example:
سنن ابن ماجه ت الأرنؤوط (3/ 311): حَدَّثَنَا هِشَامُ بْنُ عَمَّارٍ، حَدَّثَنَا مَالِكُ بْنُ أَنَسٍ، قال: بَلَغَنِي عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ عَنْ جَدِّهِ: أَنَّ النَّبِيَّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - نَهَى عَنْ بَيْعِ الْعُرْبَانِ

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*Ijma*' the majority of ulama regarding the permissibility of buying and selling using Murabaha (Ibnu Rsyd, Bidayah al-Mujtahid, juz 2, p. 161; see also al-Kasani, Bada'I as-Sana'I, juz 5 p. 220-222).[266]

It is clear that Murabaha's sale for the order is permissible, and the promise is binding morally, religiously, and judiciary.

**4. Clarity, Honesty, and Trust in Murabaha contract**

The other most important things found and understood from the literature are clarity, honesty, and trust in the Murabaha contract. Clarity, trust, and honesty are three crucial issues in the Murabaha contract. It means that the seller must clearly tell the first price (the price that they bought the commodity), the extra expenses, and the profit that they want from the purchaser. The customer also must be honest when he promises. Both of them may trust each other[267].

Clarity is an essential feature of Murabaha. All elements of Murabaha must be transparent to both parties. The commodity must be clearly known in the Murabaha contract, like other sale contracts to both parties. The first price the seller pays must be clear. The amount of money spent on the commodity must be clear (if any). The profit he wants to get must also be clear, as well as the final price. Dr. Salah As-Sawi says that the capital and the profit must be known because the awareness of the price is necessary for all sales contracts.[268] Bakr ben Abdullah says that the knowledge of both parties about the amount of the price and the profit is the Murabaha contract's pillar. So whenever knowledge about them is available, the contract is valid; otherwise, it is invalid.[269]

The literature mentions that both parties must be honest. Honesty is not something that we should talk about a lot, as it is binding in

[266] national Sharia Board - Indonesian council of Ulama, "FATWA DEWAN SYARI'AH NASIONAL," Pub. L. No. 04/DSN-MUI/IV (2000).

Translated by language center of state Islamic university Sunan kalijaga Yogyakarta Indonesia.

[267] Bakr ben Abdullah, *Feqhul-Nawazel*. V2 P68

[268] Al-Sawi, "Final Murabaha Contract and Its Contemporary Applications." P3.

[269] Bakr ben Abdullah, *Feqhul-Nawazel*.V2 P 68

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every Muslim. There are five types of sales contracts which are called honesty selling (**بيوع الأمانة**). The first is Murabaha.[270] All Sunni schools share honesty in their definitions of Murabaha. The Fatwa of NATIONAL SHARIA BOARD NO. 04/DSN-MUI/IV/2000 of Indonesia states that the bank sells the goods to the customer at a selling price equal to the purchase price plus the profit. In this regard, the bank must honestly notify the customer of the cost of goods and the required cost.[271]

All parties must trust each other. Trust is something ethical and moral. One of the basic rulings of Islamic jurisprudence says that (الأَصْل بَرَاءَة الذمّة) disclaimer is the case of the originality.[272]

The principle of innocence presumption has been in Indonesia since its form as a federal state in 1949. The Federal Constitution of the United States of Indonesia in 1949 (in its article 14 par.1) states that, "any person charged with committing a criminal offense shall be deemed innocent until proven guilty in a court hearing, by the applicable law, and he is given in the hearing of any guarantees which have been determined and necessary for defense."[273] It means that people should be honest until evidence shows that someone is not. So, all parties to the Murabaha contract must trust each other.

## C. Promise and its Ruling in the Modern Concept of Murabaha

The modern concept of Murabaha is also called promise sale because both sides have a promise. The client of the Islamic rural banks promises to buy the commodity that the bank purchase, and the bank promises to buy the commodity and sell it to the client. It is important to note whether the promise in this sale is binding or not. It is the basis for the disagreement in the modern concept of Murabaha.

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[270] Dr. Wahbatu Al-Zahaili, *Feqh Al-Aslami Wa Adelatuhu*الفقه السالمى و ادلته.

[271] National Sharia Board- INdonesiaan Council of Ulama, DEWAN SYARI'AH NASIONAL.

[272] Al-Zarqa Ahmad ben Al-Saich Mohammad, *Sharhe Al-Qawaed Al-Feqhiat* (Damishq: Dar Alqalam, 1989), Al-Maktabatul Shamilah.P 105

[273] Mangaribuan Aristo, "Innocent Until Presented," *Jurnal Hukum & Pembangunan* 50(1) (2020): 343–60, Indonesia, criminal justice, Investigation, staged Perp walk, Presentation %0Aof suspects, Presumption of Innocence.

Whether it is permissible or forbidden, it can be called a promise sale[274] because the names refer to the meaning. The following discussion discusses whether the promise in this sale (Murabaha sale for order) is forbidden (Haram) like a loan for profit, whether it is completely permissible, and whether there are some discussions for details and clarity.

As mentioned in the literature and the field research in the Islamic rural banks of Yogyakarta show, a promise is the backbone of the new version of Murabaha (Murabaha sale for order or Promise sale). That is why its value and ruling affect the ruling of the Murabaha sale for order. By analyzing the literature, it is understood that Muslims unanimously agree that fulfilling a promise (covenant) is praiseworthy and that breaking a promise (covenant) and not fulfilling it is reprehensible. This idea stands in Quran and Hadith. It was about the promise in general. However, there is disagreement and discussion about the financial promise in the judicial ruling of the promise. There are three ideas about the promise in sale contracts

I. It is not obligated to fulfill absolutely. It is the idea of the majority, Ibn Hazm, Al-Mahlab, Ibn Abdul-Bar are among them.

   **The argument:** Al-Asqlaani, in his book Fathol-Bari says:[275] Al-Molheb says: promise fulfillment is good, not binding to every situation, according to the scholars' agreement. Ibn Bataal says[276] that no one of the previous scholars says that the promise is binding judicially.[277] Theoretically, it is just a promise on a permissible issue, so there are no ways to be binding. Al-Shanqiti also argues that it is like a gift, as it is not binding unless handed, according to most scholars[278]. So, the promise of a gift could not be more binding because the gift is not binding.

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[274] Bakr ben Abdullah, *Feqhul-Nawazel*. V2 P82

[275] وَقَالَ الْمُهَلَّبُ إِنْجَازُ الْوَعْدِ مَأْمُورٌ بِهِ مَنْدُوبٌ إِلَيْهِ عِنْدَ الْجَمِيعِ وَلَيْسَ بِفَرْضٍ لِاتِّفَاقِهِمْ عَلَى أَنَّ الْمَوْعُودَ لَا يُضَارِبُ بِمَا وُعِدَ بِهِ مَعَ الْغُرَمَاءِ اه وَنَقْلُ الْإِجْمَاعِ فِي ذَلِكَ مَرْدُودٌ فَإِنَّ الْخِلَافَ مَشْهُورٌ لَكِنَّ الْقَائِلَ بِهِ قَلِيلٌ

[276] قَالَ بن بَطَّالٍ لَمْ يُرْوَ عَنْ أَحَدٍ مِنَ السَّلَفِ وُجُوبُ الْقَضَاءِ بِالْعِدَةِ أَيْ مُطْلَقًا وَإِنَّمَا نُقِلَ عَنْ مَالِكٍ أَنَّهُ يَجِبُ مِنْهُ مَا كَانَ بِسَبَب

[277] Al-Asqalani Ahmad ben Ali ben Hjar, *Fathul Bari*. V5 P 222.

[278] Al-Shanqiti Mohammad Al-Amin ben Mohammad Al-Mokhtar ben Abdul-Qader Al-Jakni, *Adhwaul-Baian Fee Edhahul-Quraan Bel-Quraan* (Birot: Darul Feker leltbaate wa Al-Nashre, 1995), Al-Maktabtu Al-Shamelah.V3 P441

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II. It is obligated to fulfill completely. It is the idea of Omar ben Abdul-Aziz, Ibn Al-Ashwa Al-Hamdaani Al-Kofi, and Ibn Shabramah. Indonesian also has the same stand.

The argument: The scholars with this idea argue on the Al-Quran verse and hadiths that exist in the literature of this research.

III. The promise must be fulfilled if it causes trouble for the promised person. Otherwise, it is not necessary to fulfill it. For example, someone says to another: “get married,” and the second says, “I do not have money for the expenses.” The first one says, “I will pay the expenses.” So the second got married. In this case, the promise is binding.

**The argument:** the general meaning of the Hadith of لَا ضَرَرَ وَلَا ضرار[279] There is no harm” and no harm should be done to others[280]. Al-Jakni Mohammad Al-Amin says: الَّذِي يَظْهَرُ لِي فِي هَذِهِ الْمَسْأَلَةِ وَاللَّهُ تَعَالَى أَعْلَمُ: أَنَّ إِخْلَافَ الْوَعْدِ لَا يَجُوزُ، لِكَوْنِهِ مِنْ عَلَامَاتِ الْمُنَافِقِينَ، وَلِأَنَّ اللَّهَ يَقُولُ: كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لَا تَفْعَلُونَ، وَظَاهِرُ عُمُومِهِ يَشْمَلُ إِخْلَافَ الْوَعْدِ، وَلَكِنَّ الْوَاعِدَ إِذَا امْتَنَعَ مِنْ إِنْجَازِ الْوَعْدِ لَا يُحْكَمُ عَلَيْهِ بِهِ وَلَا يُلْزَمُ بِهِ جَبْرًا، بَلْ يُؤْمَرُ بِهِ وَلَا يُجْبَرُ عَلَيْهِ ; لِأَنَّ أَكْثَرَ عُلَمَاءِ الْأُمَّةِ عَلَى أَنَّهُ لَا يُجْبَرُ عَلَى الْوَفَاءِ بِهِ ; لِأَنَّهُ وَعْدٌ بِمَعْرُوفٍ مَحْضٍ، وَالْعِلْمُ عِنْدَ اللَّهِ تَعَالَى.[281]

Ibn Shabarma says: إن كل وعد بالتزام لا يحل حراما ولا يحرم حلالا يكون وعدا ملزما قضاء وديانة وهذا ما تشهد له ظواهر النصوص القرآنية والأحاديث

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[279] Ibn Majah Abo Abdullah Mohammad ben Iazid Al-Qazwini, *Sonan Ibn Majah* (Darul Kotob Al-Arabi lel Nashre wa Al-tawze, n.d.). V2 P 784

Al- Albani says this Hadith is Sahih (صححه الالبانى)

[280] The rules of Islamic jurisprudence are distinguished by their comprehensiveness and breadth of meaning, so that one can know through them the legal ruling for many of the issues that fall under them. Among those great rules is what was narrated from the saying of the Prophet, may God’s prayers and peace be upon him: “There is no harm, no harm.” This hadith, though short, is included in many legal rulings, and clarifies the tight fence that the Sharia built to ensure the interests of people, both in the immediate and in the future. And if we look to the wording of the hadith, we find that he denied harm الضرر first, then denied harm الضرار secondly, and this makes us feel that there is a difference between the meaning of harm الضرر and the meaning of harm الضرار. Harm in the rulings that God has legislated for His servants, and as for denying harm: what is meant by it is to forbid the believers from causing harm or doing it.

[281] Al-Jakni, *Adhwaul-Baian Fee Edhahul-Quraan Bel-Quraan*. V3 P441.

النبوية والأخذ بهذا المذهب أيسر على الناس والعمل به يضبط المعاملات لهذا[282] ليس هناك مانع من تنفيذ مثل هذا الشرط. Every promise of commitment, as long as it does not make the forbidden (*Haram*) to be permissible (*Halal*), or, on the other hand, as the promise does not make the prohibited one (*Haram*) lawful (Halal), then a promise is binding judiciary and religiously. It is proven by the phenomena of the Qur'anic texts and the hadiths of the Prophet. Adhering to this doctrine is easier for people and working with it regulates transactions, so there is no objection to implementing such a condition.

It appears that breaking promises is not permissible because of being the signs of hypocrites, because God says { كَبُرَ مَقْتًا عِنْدَ اللَّهِ أَنْ تَقُولُوا مَا لَا تَفْعَلُونَ} "God hates for what you said, but you did not do." This verse also includes breaking promises. But if a promising person refuses to fulfill the promise, he is not to be judged and not imposed by force. Instead, he is commanded, and he is not to be compelled because most of the nation's scholars did not say that the promise is obliged to be fulfilled. The real knowledge is with the God Almighty.

According to Indonesian Scholars (*ulama*) the promise is absolutely binding. The fatwa NO. 04/DSN-MUI/IV/2000, concerning Murabaha, the National Shariah Board of Indonesia states that if the bank accepts the application, it must first purchase the ordered assets legally with the trader/seller. The bank then offers the assets to the customer, and the customer must accept (buy) them according to the promise he has agreed upon because, legally, the promise binds. Both parties must make a contract of selling and buying.[283] Moreover, all the shariah advisory boards members (for example, Khudori, Lc. Member of Shariah advisory board of Bank Madina Mandiri

[282] Dr. Wahbatu Al-Zahaili, *Feqh Al-Aslami Wa Adelatuhu*الفقه السالمى و ادلته. V5 P3777

[283] National Sharia Board- INdonesiaan Council of Ulama, DEWAN SYARI'AH NASIONAL.

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Sejahtera)[284] and officials of the Islamic banks in Yogyakarta believe that promise is binding religiously, morally, and judiciary.z[285] They argue by verse 1 of Soraht of Al-Maidah of the Quran.

"O you who have (يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓاْ أَوۡفُواْ بِٱلۡعُقُودِۚ ... ١) believed, fulfill [all] contracts. "٢٨٦

And the Hadith of the Prophet PBUH:

الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ، إِلاَّ صُلْحًا حَرَّمَ حَلاَلاً، أَوْ أَحَلَّ حَرَامًا، وَالمُسْلِمُونَ عَلَى شُرُوطِهِمْ، إِلاَّ شَرْطًا حَرَّمَ حَلاَلاً، أَوْ أَحَلَّ حَرَامًا.٢٨٧ (رواه الترمزى عن عمرو بن عوف)

"Peace can be made between Muslims except for peace which forbids what is lawful (*halal*) or makes *halal* what is unlawful (*haram*)" (narrated Tirmizi from 'Amr bin 'Auf).

As a result, the idea of Indonesian scholars about the ruling of promise is like the idea of Omar ben Abdul-Aziz, Ibn Al-Ashwa Al-Hamdaani Al-Kofi, and Ibn Shabramah. By deep thinking about the above definitions, it is clearly understood that

The idiomatical definition stands on the linguistic definition.
The time to admitting of the promise is the future.
The promise is in donation (تبرعات), not in exchanges.
The promise, according to Islamic jurisprudence, concluded from one side.

**The general rules:** the general rules which make (the promise sale بيع المواعدة) valid and lawful are as follows:

The contract must not be binding on anyone in written or verbal before the complete ownership.

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[284] Khudori, Ahmad Lc. Member of Shariah advisory board of Bank Madina Mandiri Sejahtera interview 27 Dec 2021

[285] Hari Kristiawan Pejabat Eksekutif Audit Intern (Executive Officers Internal Audits) BPRA, Bank Barokah Dana Sejahtera 10 Desember 2021 .

[286] Al-Maida (1)

[287] Al-Tirmizi Mohammad ben Aesa ben Sawrat ben Musa ben Ad-dhak, *Sunan Al-Termezi*. No. 1352

The compensation for damages must not be obligatory on any parties, the bank or the client. It must remain in its nature. The compensation of damages of any good is on the owner of the commodity at the time of damage.

The contract must not be made unless the bank owns and receives it completely.

## D. Discussion of Murabaha contracts in Islamic banks of Indonesia

Some literature state that there are some problems regarding the legality of the Murabaha contract according to Islamic law in implementing Murabaha in Indonesian Islamic banks. According to the existing literature, two points do not seem compatible with Sharia.

I. Some scholars say that the first price of the commodity and profit are not clear.

II. The banks are only funds provider as the customer buys the goods directly from the first seller and he bank only pays for it.

Both of these issues are discussed below.

All the conditions of validity of a sale contract are present in Murabaha contracts of Indonesian Islamic rural banks in Yogyakarta. There are two concerns in the literature.

I. Related to the unclarity, it can be said that everything is clear because first of all, the fifth part of the first article of the Decide of the fatwa No.04/DSN-MUI/IV/2000 Concerning Murabaha of Indonesian council of Ulama says: "Banks must state all matters relating to purchases, for example, if the purchase is made on the debt."[288] It means everything must be clear. Secondly, in most cases, the bank gives authority to the client to buy the commodity for the bank as a *Wakil* (representative) of the bank through the *Wikalah* contract. After that, the bank sells it to the client. It means that everything is clear to both parties. When a case is found that something is unclear, it violates the law. The violation of the law

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[288] National Sharia Board- INdonesiaan Council of Ulama, DEWAN SYARI'AH NASIONAL.

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could be found everywhere, but it does not mean that all cases or the product are illegal. Fatawa No 10/DSN-MUI/IV/200 of the National Sharia council of Indonesia about *Wakalah* could be seen.[289]

II. The second concern is that the bank provides the fund only and works as a fund provider, not a business entity. It can lead to misunderstanding. The bank provides the fund for the client to buy the commodity, not for himself but for the bank. The client works as a representative of the bank in this phase. In the next step, the bank sells the same commodity to the client.[290] It means that the bank providing the fund is twice involved in the selling process: First, it buys the commodity through a representative (*wakil* وكيل) for itself, then it is involved in the second sale and sells the commodity to the client. So, it works as a complete business entity, not as a fund provider like conventional banks.

It can concluded that there are three kinds of Murabaha: simple Murabaha, Murabaha sale for order, and Murabaha sale for order through *wakalah* (representative). See Figures 1-3.

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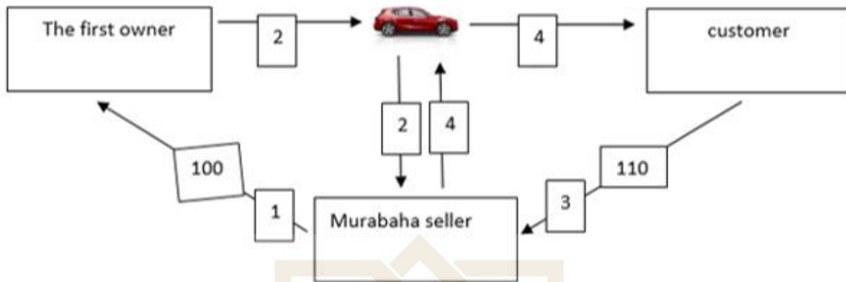
[289] FATWA NATIONAL SHARIA COUNCIL, NO: 10/DSN-MUI/IV/2000, About W A K A L A H

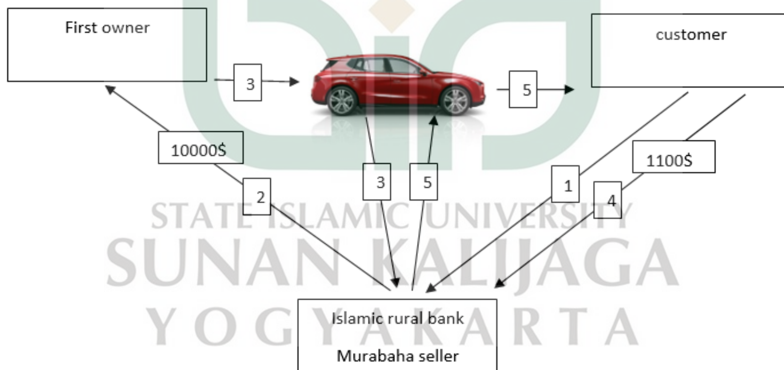
[290] Mohammad. And. Al-Khodari. And OJK. And the Indonesian fatawas about Wakalah and Murabaha. And the ensures of the clients of the Banks.

figure one: simple Murabaha




1. Murabaha seller buys the car 100
2. The care became under the ownership of the Murabaha seller.
3. The customer buys the care 110 from the Murabaha seller.
4. The car became under the ownership of the cust0mer.

Figure two: direct Murabaha sale for order

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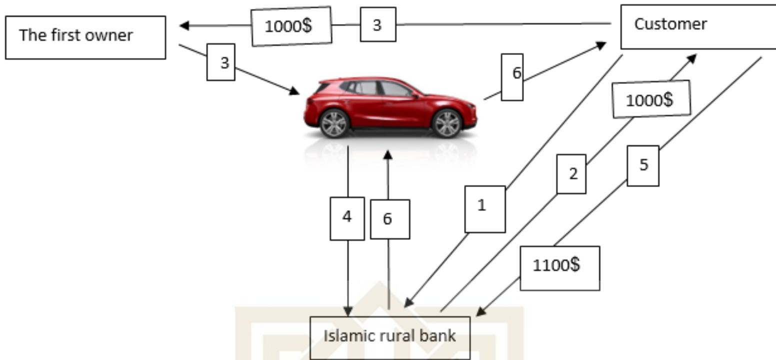
1. The customer orders the car to the Islamic rural bank along with the promise that he/she will buy it from the Islamic rural bank at the same price which the bank will buy it plus a known amount of money as profit of the bank.
2. The Islamic rural bank buys the car 1000$ for example.
3. The car becomes under the ownership of the Islamic rural bank.
4. The customer buys the car from the Islamic rural bank at 1100$ for example. by cash or instalment depends on the mutual agreement.
5. The car becomes under the ownership of the customer.

Figure three: the process of Murabaha sale for order of an Islamic rural bank through *Wikalah*




1. The customer orders the Islamic rural bank to a specific car with special specifications, along with the promise that he/she will buy it from the Islamic rural bank at the same price which the bank will buy it plus a known amount of money as profit of the bank.
2. The Islamic rural bank makes hem/hir its wakil (representative) through a special contract, to buy the car which he/she want it for the bank.
3. The customer buys the car as wakil (representative) for the bank for the bank at 1000$ for example.
4. The car becomes under the ownership of the bank.
5. The customer then buys the car from the bank at 1100$ for example, by cash or instalment depends on the mutual agreement.
6. The car becomes under the ownership of the customer.

## E. Indonesian School (*Madhhab*) for Murabaha

One of the advantages of Islam is that there is sample opportunity for daily life in secondary matters of life. That is why there are some jurisprudential schools. The majority of the Muslim societies follow four Sunni Madhabs. Even though there are some minor differences and disagreements in ruling some secondary or subsidiary matters of life, all of these Madhabs respect each other's ideas. Many times the followers of one Madhab leave the idea of their Madhhab on specific issues and move to follow another Madhab. This flexibility gives good opportunities to Muslim societies to apply the Islamic rules in their daily lives according to their culture, economy and many other aspects.

Indonesian Islamic banks also benefit from these great opportunities. Most Indonesian people are Muslims, and most

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Indonesian Muslims follow Shafi'i Madhab. That is why it was estimated that the Indonesian Islamic banks, especially in Murabaha contracts, follow the Shafi school. But the Islamic banks provide their products especially Murabaha according to the fatwas of the Indonesian council of ulama. According to the interview with the Shariah advisory board members of the Islamic rural banks of Yogyakarta, they have to apply the fatwas of the Indonesian Council of Ulama.[291] The directors and Sharia advisory boards of Islamic banks can not apply any Madhabs or their own idea in making a contract or solving a dispute. However, they have to follow the official Fatwas of the Indonesian Council of Ulama[292]. It is concluded that the Islamic banks of Indonesia follow the Fatwa of the Indonesian Council of Ulama. Moreover, the Indonesian Council of Ulama does not issue their Fatwas according to an exact Madhab, but from some opinions of all Madhabs and directly stands their Fatwas on the most valuable Islamic sources. It means that the Islamic banks of Indonesia obtain benefits from the various Islamic Madhhabs and Islamic sources according to their cultures, economics, and the need of the societies. It can be concluded that the Islamic banks, especially the rural banks of Yogyakarta of Indonesia, apply Indonesian Madhab, not Shafi Madhab. For example, the promise is not binding judiciary in Shafi'i Madhab but binding judiciary according to Indonesian Madhab for Islamic banks. The other example is *Tawaroq*, which is permissible in Shafi Madhab. However, there is no sign of *Tawaroq* in the Islamic rural banks of Yogyakarta and the fatwas of the Indonesia Council of Ulama.

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## F. Betrayal in Murabaha

The principle of honesty sales is based on trust and confidence in the dealings between the two parties. That is why the seller must be honest when he mentions the price he/she pays for the commodity. He/she should avoid the action of creating inconvenience. As Allah Almighty says { يَا أَيُّهَا الَّذِينَ آمَنُوا لاَ تَخُونُوا اللَّهَ وَالرَّسُول وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ

[291] Al-khodury & Mohammad &…
[292] OJK

{تَعْلَمُونَ Al-Anfal:27. "O you who believe, do not betray God and the Messenger and do not betray your trusts while you know." Prophet Mohammad PBUH also says مَنْ غَشَّنَا فَلَيْسَ مِنَّا "Whoever deceives us is not one of us."[293] This part discusses the position of Islamic schools in dishonesty in the Murabaha sale since it is a kind of Honesty sale.

According to Hanafi jurisprudence, when a buyer knows that the seller is not honest in telling the price he pays for the commodity, the buyer has two choices. First, he keeps the commodity at the price that he bought it. Second, he returns it. He can not ask to drop the price.[294]

Lying is unlawful in telling the first price, according to the Maliki school. When the seller lies and the purchaser knows in the future, he has the right to keep the commodity or return it. But when the seller reduces the price, the buyer has to keep it. [295] Maliki school adds that all kinds of cheating are forbidden in all sales, including Murabaha. If the seller hides something the purchaser does not like or decreases the interest of the purchaser, the purchaser has the right to return it or keep it on all the money. If the seller reduces the price, the buyer does not have to keep it, but he can also keep it.[296]

According to Hanbali school, when it is uncovered - by force or without force – that the seller did not tell the truth, the contract is valid, but the seller must return the amount of money he lied of. For example, a seller says he bought an item for 100 and sold it at 110. After the contract, it was known that he bought it for 9, and he had to return 11 to the buyer. The contract is valid, but the seller must return the amount of money he lied of and its profit.[297]

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[293] Al-Qoshairi Al-Naishbori Abo Al-Hasan Muslem ben Al-Hajaj ben Musllm, *Al-Jamea Al-Saheh Moslim* (Birot: Daro Al-Jeel, n.d.), http://www.islamic-council.com.

[294] Mohammad, *Al-Jawharatu Al-Naierat Ala Mukhtasaru Al-Naerah*.

[295] Mohammad, *Al-Jawharatu Al-Naierat Ala Mukhtasaru Al-Naerah*.

[296] Al-gharnaati Mohammad ben Ahmad ben Jazee Al-Kalbi, *Al-Qawanin Al-Feqhia*.

[297] Abn Qodamah Al-Maqdsi Abu Mohammad lawfaquddin Abdullah ben Ahmad ben mohammmad ben Qodamah Al-Jamaiily Al-Maqdesi thma Al-Damshqy Al-Hnballi, *Al-Moghni Fee Feqh Al-Amam Ahmad Ben Hanbal Al-Shaibani* (Birot: Darul Feker, 1985).

According to Maliki and Hanbali, lying is seen from the same perspective. Both believe that the buyer may keep the commodity when the seller reduces the price. However, Hanafi school has a different perspective. The Hanafi school says that there is no need to reduce the price. The buyer must keep it at the amount of money he bought or return it.

Indonesian Islamic banks (BPRSs) do not apply the idea of any classic schools, but they apply the Madhab of DSN.[298] The Indonesian Fatwas do not state anything about betrayal in Murabaha, so when a problem occurs, it is overcome through arbitration. Yet if the arbitration does not work, the case goes to the religious court.

## G. The Determinants which Make Murabaha Used More than the other Products by Indonesian Islamic Rural Banks

According to the report of the OJK, Murabaha is used more than other products of Islamic rural Banks in Indonesia.[299] See Table 14.

Table number 16 percentage of the products of Indonesian Islamic banks.

| No | products | 2017 | Jun 2018 | Jun 2019 | Jun 2020 | December 2020 | September 2021 |
|---|---|---|---|---|---|---|---|
| 1 | Aqad Murabahah | 53,23% | 51,77% | 49,95% | 45,80% | 46,11% | 46,22% |
| 2 | Aqad Musyarakah | 34,87% | 36,86% | 42,74% | 45,05% | 44,72% | 45,69% |
| 3 | Aqad Mudharabah | 5,87% | 5,72% | 4,29% | 3,22% | 3,07% | 2,65% |
| 4 | Aqad Qardh | 2,23% | 2,18% | 2,75 | 2,62% | 3,06% | 3,00% |
| 5 | Aqad Ijarah | 3,15% | 3,18% | 3,25% | 2,46 | 2,20% | 1,82% |
| 6 | Aqad Istishna | 0,41% | 0,47% | 0.56% | 0,61% | 0,62% | 0,61 |
| 7 | others | 0,25% | 0,27 | 0,28 | 0,24% | 0,22% | 0,00% |

Source: a snapshot of Indonesia Islamic Banking Development

[298] Professor Tolos Mustafa, interview Tulus musthofa, dps , bprs bds,21 February 2022

[299] 2020, "No Title."

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It means that the Murabaha contract is used more than the other products of Islamic rural banks in Indonesia. The reasons can be studied in two parts: first, in terms of application, and the other is its impact on society.

I. In terms of application, it is clear and easy to be understood and applied by both parties used[300]. The Murabaha contract is simple. It does not need a long process and specific conditions.[301] The buys the commodity with a clear price and bank's profits. There are not many parties involved (only two parties, while the third party does not relate to the bank's client). The Murabaha does not need particular conditions, only the general conditions of a sale contract with honesty, clarity, and fulfillment of the promise. The other thing which makes it more attractive to the client is the proses of *Wakalah*. Through the Wakalah, the client finally hands over the wished item. The *Wakalah* process allows the client to know the commodity in detail as well as the price. Therefore, if he/she wants it, he/she buys it. On the contrary, when he/she does not want it, he/she does not take it.[302]

   Prof. Dr. H. Syamsul Anwar, M.A., a member of the Shariah advisory board of PT BPRS Bangun Drajat Warga (BDW) rural bank in Yogyakarta, mentions that although Murabaha is primarily a sharia principle for consumptive activities. However, many commercial activities can also use the sharia Murabaha principle. For example, the procurement of sacrificial cows (towards Eid al-Adha), a trading activity, is financed by the Bank for *qurban* cattle traders who become their customers with Murabaha, where the Bank buys cows for the third party (for example, from farmers).

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[300] Group interview OJK.

[301] Khudori, Ahmad Lc. Member of Shariah advisory board of Bank Madina Mandiri Sejahtera interview 27 Dec 2021

[302] As-Sakhawi Al-alaamah Ash-shaikh Mohammad ben Abdor-Rahman, *Eltmas As-Sad Fi Al-Wafa Bel-Wad*.

They sell them to the *qurban* committee in a mosque. Murabaha is chosen because it is safer for the bank.[303]

II. In terms of the impact of Murabaha on society, it has a substantial impact on society. The most significant impact of the functions of Murabaha financing is on the economy and trade. The essential functions of Murabaha in the economy and trade are:

Improving the usability of money and capital
Improving the usability of goods
Improving the circulation of money traffic
Increasing people's desire to do business
Increasing national income and

A tool for economic stability[304]

The impact of economic welfare on customers occurs when Murabaha is used to purchase capital goods or merchandise inventory to be resold so that customers will benefit in trading, which in turn will increase customer income.[305] For example, people buy a car or motorcycle and use it for GoJek (GoCar) or local transportation.[306]

On the other hand, the functions of Murabaha bring welfare to the daily life of individuals. For example, the financial situation of some families is such that they can never buy a house, but they can buy it through a Murabaha contract. Alternatively, for example, a father cannot buy a laptop for his son, but he can buy it from an Islamic bank through Murabaha[307].

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[303] M.A. Prof. Dr. H. Syamsul Anwar, "Inteview," in *PT BPRS Bangun Drajat Warga (BDW)* (Yogyakarta, 2022).

[304] Mohammad
[305] Mohammad
[306] Group interview OJK
[307] Al-Khudhari

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