

ANALYSIS OF THE DECISION OF THE COURT OF THE RELIGION OF SLEMAN, YOGYAKARTA (NO. 796/ Pdt.G / 2018 / PA. Smn) ON THE RESCHEDULING OF MURABAHAH FINANCING ACCORDING TO ISLAMIC LAW

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Abstract

The increasingly diverse needs of the community place financing as the most sought after product of bank services. And Financial Institutions are a useful institution to help launch an economic mechanism. Islamic financial institutions are developing very rapidly in Indonesia. One of them is the Islamic People's Financing Bank which helps in financing. One of the most attractive products for the community is the Murabaha financing contract. However, Murabaha agreements are included in the high level of problematic financing. This is caused by the customers given that they cannot be fulfilled so that they become broken promises. This study aims to find out the description of the decision of the Sleman Religious Court No.796 / Pdt.G / 2018 / PA.Smn, knowing the rescheduling of the murabaha contract in Islam and analyzing the decisions of the Sleman Religious Court in handling the renewal of the murabahah agreement according to Islam. The method used in this study is descriptive qualitative, data presentation and conclusion drawing. In collecting data, researchers use the method of observation, interviews and documentation. The results of this study are the decisions of the Sleman Religious Court in case No.796 / Pdt.G / 2018 / PA. Smn

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concerning the rescheduling of murabahah contracts in accordance with Islamic law because they have used the foundation of Islamic law. The decision of the Sleman Religious Court only strengthened the decision to bring up a peace agreement and to schedule a murabaha agreement

Keywords: *Decision, Contract, Murabahah, and Islamic Law*

Abstrak

Kebutuhan masyarakat yang semakin beraneka ragam menempatkan pembiayaan sebagai produk jasa bank yang paling banyak diminati. Dan Lembaga Keuangan adalah suatu lembaga yang berguna membantu melancarkan mekanisme ekonomi. Lembaga keuangan Syariah berkembang sangat pesat di Indonesia. Salah satunya adalah Bank Pembiayaan Rakyat Syariah yang turut membantu dalam melakukan pembiayaan. Produk yang paling diminati oleh masyarakat salah satunya adalah akad pembiayaan murabahah. Namun akad murabahah termasuk dalam tingkat pembiayaan bermasalah yang cukup tinggi. Hal ini disebabkan nasabah yang diberikan tidak dapat dipenuhi sehingga menjadi ingkar janji. Penelitian ini bertujuan untuk mengetahui deskripsi putusan Pengadilan Agama Sleman No.796/Pdt.G/2018/PA.Smn, mengetahui penjadwalan ulang akad murabaha dalam islam dan menganalisa putusan Pengadilan Agama Sleman dalam menangani pembaharuan akad murabahah menurut islam. Metode yang digunakan dalam penelitian ini adalah deskriptif kualitatif, penyajian data dan penarikan kesimpulan. Dalam pengumpulan data, peneliti menggunakan metode observasi, interview dan dokumentasi. Hasil dari penelitian ini adalah keputusan Pengadilan Agama Sleman dalam perkara No.796/Pdt.G/2018/PA.Smn tentang penjadwalan ulang akad murabahah sesuai dengan hukum islam dikarenakan telah menggunakan landasan dari hukum islam. Keputusan

Pengadilan Agama Sleman hanya menguatkan keputusan untuk mealakukan kesepakatan damai dan untuk melakukan penjadwalan akad murabaha. .

Kata Kunci: *Putusan, Akad, Murabahah, dan Hukum Islam*

A. Background Of Study

The needs of an increasingly diverse society that puts financing as bank services, products most in demand. This is because financial institutions financing applied very helpful in meeting their needs. But in meeting their needs, many people who do not have the funds.

The financial institution is an institution that is useful to launch an economic mechanism to the meaning of any company whose business activities related to finance. In general, the financial institution acting as intermediary. Financial intermediation is the process of absorption of funds from surplus units of the economy, both the business sector, government agencies and individuals (households) for the provision of funds for other economic units.³

So many Islamic institutions that have grown in Indonesia. Islamic banks consisting of BUS (Sharia Commercial Bank), UUS (Sharia Business Unit of a Conventional Bank) and BPRS (Sharia Rural Bank). Basically doing the same activity, which is doing the collection and distribution of public funds in addition to the provision of other financial services.⁴ And one of them is Sharia Financing, Bank assisted in financing. Financing Bank's business activity Sharia Rural Bank covers placed funds in other Islamic banks in the form of deposit by agreement *wadiah* or investments based on *mudharaba* contract or other agreement is not contrary to Islamic principles.⁵ This is because this institution can reach Islamic transactions in remote areas that cannot be served by the bank or banks open Islamic business unit.

In product distribution of funds to customers, an outline of Islamic

³ Andri Soemitra, *Bank & Lembaga Keuangan Syariah*, (Jakarta: Kencana,2015) p. 29.

⁴ *Ibid*, p.72

⁵ Darsono, Ali Sakti, Ascarya, dkk., *Perbankan Syariah Di Indonesia Kelembagaan dan Kebijakan Serta tantangan Ke Depan*, (Jakarta : Rajawali Press, 2017), p.100

financing products are divided into six categories are distinguished based on their intended use, namely: financing based on exchange, financing for the results, financing qardh, finance leasing goods to move or not to move to the customer, debt and financing multiservice takeover.⁶ Of the six categories of Islamic financing products, financial products most desirable one is *murabaha* contract financing the categories based on exchange.

Murabaha is a financing agreement in the form of buying and selling of goods at cost of goods plus a margin agreed by the parties where the seller inform in advance the acquisition price to the buyer.⁷ Financing *murabaha* shaped very much in demand because of the policy applied not to burden the people. But this raises a lot of problems. The problems that almost all financial institutions will naturally ie customers who can not repay what has been agreed or broken promises which raised defaults.

Finance management is one indicator of the success of these institutions in managing their business. Good financial management can decrease the value of financing problems and can increase the amount of assets in these institutions. Thus the quality of financing is very influential on the effectiveness of expected revenues. So the quality must be maintained in order to reduce the risk of financing problems, the precautionary principle is a major concern in the management of financing.⁸

Islamic Bank to provide financing hoped that the financing is running smoothly, but did not rule within customer financing receiver financing facilities will have problems or difficulties in the payment of which can result in losses for Sharia Bank.⁹ According to the Indonesian Banking Statistics jammed financing in BPRS Indonesia, there are 590 billion in October and was reduced to 551 billion in December 2018.¹⁰ Seeing it is a sign that the BPRS has managed to reduce the number of bad debts experienced. But still financing problems mostly occur in the case of *murabaha* contract.

⁶ Andri Soemitra, *Bank & Lembaga Keuangan Syariah*,... p.79-87

⁷ *Statistik Perbankan Syariah*, Otoritas Jasa Keuangan accessed on October 27, 2018 at 14:50 pm

⁸ Heri Sudarsono, *Bank dan Lembaga Keuangan Syari'ah*, (Yogyakarta: Ekonisia, 2004), p.96

⁹ Trisadini P. Usanti, *Hukum Perbankan*, (Depok : Kencana,2017), p. 237

¹⁰ *Statistik Perbankan Indonesia*, Otoritas Jasa Keuangan accessed on March 11, 2019 11:00 pm

A. Akad

1. Definition Akad

Basically, the contract has been made since the Age of Ignorance and grow today. However, many people prefer to use a conventional treaty. Therefore one must understand the essence of the meaning of the contract or agreement. In language, or etymology, covenants among other means:¹¹

الرَّبْطُ بَيْنَ أَطْرَافِ الشَّيْءِ سَوَاءٌ أَكَانَ رِبْطًا حِسِّيًّا أَمْ مَعْنَوِيًّا مِنْ جَانِبٍ أَوْ مِنْ جَانِبَيْنِ،

The bond between the two cases, both real and bond covalently literal meaning, in one way or two aspects.

In Arabic can also mean *العقدة* (connection), *العهد* (promise). The word *ح*-(contract) in Arabic actually means tightly bind, join, lock, hold or otherwise make arrangements closely, just like lace.¹² *Akad* among other things means a bond between the two cases, both real and bond covalently literal meaning, in one way or two-sided.¹³ *Akad* widely known as the Contract. Contract terms derived from English, namely contract. While in the Netherlands, called *overseenkomst* which means the agreement.¹⁴

In general, within the meaning of the contract definition outside is almost the same with the understanding in terms of language or etymology. According to some scholars Syafi'iah, Malikiyah and Hanabilah, namely:¹⁵

كل ما عزم المرء على فعله سواء صدر بارادة منفردة كالوقف والإبراء والطلاق واليمين أم احتاج إلى إرادتين في إنشائه كالبيع والإيجار والتوكيل والرهن.

Meaning: Everything was done by a person on his own, such as endowments, divorce, liberation, or something that its formation requires two people desire such as buying and selling, representatives and pledge.

The meaning of the term of the contract, according to some scholars say that the engagement is in charge with the consent and Kabul

¹¹ وهبه الزوحيلي، *الفقه الإسلامي والعدلة*، جزء ٤، (دمشيك : دار الفكر، ١٩٨١)، ص. ٨٠.

¹² Veithzal Rivai, dkk., *Islamic Transaction Law in Bussiness dari Teori ke Praktik*, (Jakarta : Bumi Aksara, 2011), p. 4

¹³ Mardani, *Hukum Sistem Ekonomi Islam*, ... p.143

¹⁴ Salim H.S, *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*, ...p. 25

¹⁵ Rachmat Syafei, *Fiqih Muamalah*, (Bandung : Pustaka Setia, 2001), p.43

under the provisions of Personality 'impacting object, according to Ibn Abidin. Meanwhile, according to Al-Kamal Ibni Humam, the contract is one of those sayings docking with another contract in Personality 'in terms of appearances and impact on the object.¹⁶

According to Syamsul Anwar, the contract is the consent and Kabul meeting as a statement of the will of two or more parties to bear some legal effect to the object. The contract is an agreement in an agreement between two or more parties to initiate and / or perform certain legal actions.¹⁷

Akad in the use of Islamic law and the agreement means an agreement between two people legally, influential and binding. In addition, the contract also is identified by Muhammad Qadri Basha as a display of a merger between the artificial positive proposal from one of the groups and the acceptance of other groups that have an influence in the same direction with the subject of the issue in the contract.¹⁸

While understanding the agreements or contracts regulated by Article 1313 of the Civil Code, which states that the agreement is an act by which one or more parties attach himself to one or more persons. The legal relationship between the subject of another law in the field of property, where the legal subject that one is entitled to achieve and so the subject of other legal obligation to carry out in accordance with the accomplishments have been agreed.¹⁹ Basically sense of the term of the contract is a binding agreement between two parties that will appear after legal effect on the object as agreed.

2. Normative Plattform of Akad

In making a sharia contract or agreement must be based on the legal basis, which are described in the arguments naqli, namely:

a. Al-Qur'an

In the Qur'an, Allah described in the verses of the contract, including:

¹⁶ Mardani, *Hukum Sistem Ekonomi Islam*, ... p.144

¹⁷ Pusat Perjakian Hukum Islam dan Masyarakat Madani (PPHMM), *Kompilasi Hukum Ekonomi Syariah Buku II*, p. 20

¹⁸ Veithzal Rivai, dkk., *Islamic Transaction Law in Bussiness dari Teori ke Praktik*, ...p. 6

¹⁹ Salim H.S, *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak*, ...p.27

وَ أَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

“Fill the promise it must be held accountable.” (Surah Al-Isra verse 34)²⁰

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

“O ye who believe! Fulfill promises “(Surah Al-Maidah verse 1)²¹

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ

“O ye who believe! Ye shall not eat each other neighbor’s property with the falsehood (not true) except in a treasure basic trade applied to consensual among you “(Surah An-Nisa verse 29)²²

b. Hadits

In the words of Rasullah convey some things are allowed and which are prohibited from making a contract or purchase are:

حَدَّثَنَا أَبُو نَعِيمٍ حَدَّثَنَا زَكَرِيَاءُ عَنْ عَامِرٍ قَالَ سَمِعْتُ النُّعْمَانَ بْنَ بَشِيرٍ يَقُولُ سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ الْحَلَالُ بَيْنَ وَالْحَرَامِ بَيْنَ وَبَيْنَهُمَا مُشَبَّهَاتٌ لَا يَعْلَمُهَا كَثِيرٌ مِنَ النَّاسِ فَمَنْ اتَّقَى الْمَشَبَّهَاتِ اسْتَبْرَأَ لِدِينِهِ وَعَرْضِهِ وَمَنْ وَقَعَ فِي الشُّبُهَاتِ كَرَعَ يَرَعَى حَوْلَ الْحِمَى يُوشِكُ أَنْ يُوَاقِعَهُ أَلَا وَإِنَّ لِكُلِّ مَلِكٍ حِمًى أَلَا إِنَّ حِمَى اللَّهِ فِي أَرْضِهِ حِمَارُهُ أَلَا وَإِنَّ فِي الْجَسَدِ مُضْغَةً إِذَا صَلَحَتْ صَلَحَ الْجَسَدُ كُلُّهُ وَإِذَا فَسَدَتْ فَسَدَ الْجَسَدُ كُلُّهُ أَلَا وَهِيَ الْقَلْبُ

“From Nu’am bin Bashir, he said, ‘Rasulullah SAW. Barsabda, ‘Everything is lawful and unlawful is clear, between them there are things that are vague and unknown to most people. Whoever left nothing that resembled (close) sin, then it means has been left unclean. But those who follow things that are dubious that tends toward sin, he actually fell on the unlawful. All sin is leading (gifts) of Allah, whoever would be sitting in a field for it. “(Hadith Bukhari)²³

He also forbids mankind to engage in transactions with gharar forbidden. Rasulullah SAW. Said:

²⁰ Departemen Agama Republik Indonesia, *Qur'an Hafalan dan Terjemahan*, (Jakarta: Almahira, Cetakan 1, 2015), p.285

²¹ Ibid, p.106

²² Departemen Agama Republik Indonesia, *Qur'an Hafalan dan Terjemahan*, ...p.83

²³ Imam Al-Hafidz Ibnu Hajar Al-Asqalany, *Bulugul Maram Five In One diterjemahkan dari Bulughul Maram min Adillatil Ahkam*, (Jakarta : Noura Books, 2012), p.522

قَالَ تَهَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنْ بَيْعِ الْغَرَرِ

“Prophet Muhammad, forbid gharar” (Hadith Muslim History)²⁴

حَدَّثَنَا أَحْمَدُ بْنُ سِنَانَ حَدَّثَنَا كَثِيرُ بْنُ هِشَامٍ حَدَّثَنَا كُثَيْبُ بْنُ جَوْشَنِ الْقُشَيْرِيُّ عَنْ
أَيُّوبَ عَنْ نَافِعٍ عَنْ ابْنِ عُمَرَ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ التَّاجِرُ الْأَمِينُ
الْصَّدُوقُ الْمُسْلِمُ مَعَ الشُّهَدَاءِ يَوْمَ الْقِيَامَةِ

“Traders are honest and trustworthy will be with the martyrs on the Day of Judgment.” (Hadith history of Ibn Majah)²⁵

3. Formation of Akad

a. Pillars Akad

A new contract is formed when fulfilled rukunnya. The pillars of the contract should be in the new agreement are:²⁶

1) The parties that make the contract (‘Aqidain)

The parties that make or collectively, the subject of the contract which can be a legal entity²⁷ or individuals that buyers and sellers.²⁸

There are several conditions such contracts, namely:²⁹

- a) Someone who mukallaf, that is, those who already have a certain position so that he was burdened with certain obligations.
- b) Law Firm, which is a partnership established by law and have responsibility kehartaan separate from its founders.

2) Statement of the will of the parties (shigat al-'acid)

Shigat al-'aqd or Islamic marriage contract (handover), which is something that was propped on the two parties to make a contract that shows up what is in the hearts of both of the occurrence of a contract. It can be seen with speech acts, gestures, and writing.³⁰

²⁴ Ibid, p. 523

²⁵ Imam Al-Hafidz Ibnu Hajar Al-'Asqalany, *Bulugul Maram Five In One diterjemahkan dari Bulughul Maram min Adillatil Ahkam, ...* p. 222

²⁶ مناهج جامعة المدينة العالمية، التفسير الموضوعي ١ جزء: ١، (جامعة المدينة العالمية)، ص. ٣٨٢

²⁷ Mardani, *Hukum Sistem Ekonomi Islam, ...* p.146

²⁸ مناهج جامعة المدينة العالمية، التفسير الموضوعي ١ جزء: ١، ... ص. ٣٨٢

²⁹ Mardani, *Hukum Sistem Ekonomi Islam, ...* p.146

³⁰ Rachmat Syafei, *Fiqih Muamalah, ...* p.46

There Terms shigat al-'aqd them, namely:³¹

- a) *Jala'u al-ma'na* (Expressed by the phrase a clear and definite meaning), so it can be understood that the desired type of contract.
 - b) *At-Tawafuq / at-tathabuq Baina al-consent wa al-Kabul*(Rapprochement between consent and granted)
 - c) *Jazmu al-iradataini* (Consent and Kabul reflect the will of each party for sure, steady) does not show any element of doubt and coercion.
 - d) *Ittishad al-Kabul bi al-hijab*, Where both parties may be present in a majlis.
- 3) The purpose of the contract or something diakadkan (maqudu alaih)
- In legal terms the agreement called “achievements”. This objective is in accordance with his contract types, such as the purpose of the purchase is to deliver the goods from the seller to the buyer at a price.³² Akad destination that is something precious or valuable.³³
- 4) The object of the contract (mahallu al-'aqd). Terms object of the contract is:³⁴
- a) Halal by Personality ‘
 - b) Helpful (not damage or used to damage)
 - c) Owned or on the authority of the owner
 - d) Can be handed over (objects in power)
 - e) With a clear price

b. Terms of the Agreement

Naturalists conduct a transaction or occurrence, contract there must be a contract requirement, And cannot be applied in case things are canceling the contract, the validity requirements such as:³⁵

- 1) Do not offer price to the seller to sell the sales in the selection period, and this is not like dealing before prices stabilize, become free tests, and to pay for her time.

³¹ Mardani, *Hukum Sistem Ekonomi Islam*, ...p.146

³² Mardani, *Hukum Sistem Ekonomi Islam*, ...p.147

³³ مناهج جامعة المدينة العالمية، التفسير الموضوعي ١ جزء: ١، ...ص. ٣٨٢

³⁴ Mardani, *Hukum Sistem Ekonomi Islam*, ...p.147

³⁵ مناهج جامعة المدينة العالمية، التفسير الموضوعي ١ جزء: ١، ...ص. ٤٨٢-٥٨٢

قال -صلى الله عليه وسلم-: ((لا يسم المسلم على سوم أخيه)) الحديث رواه مسلم.^{٣٦}

He (peace and blessings of Allah be upon him) said: "Muslims do not call his sister." ^أ *Haditst Muslim history.* This means that the seller and the buyer are subject to certain price, and tenants are placed in it, and others are paid over to the owner or the like.

- 2) Not sell the good brother, like offering to the buyer during the sale selection period for the sale of what is best or less, is a free choice.

قال -صلى الله عليه وسلم-: ((لا يبيع بعضكم على بيع بعض)) رواه مسلم.^{٣٧}

He said -peace be upon him - ((do not sell any of you to sell some)) Hadith Muslim History, Means that the seller and buyer agree on the price of goods, the author says: I am selling for less than the price to you.

- 3) Not to promote the product lie, mislead, deceive and betrayal, as if he bought at a certain price and a certain price.

عن عبد الله بن أبي أوفى -رضي الله عنه- أن رجلا أقام سلعة في السوق, فحلف بالله: لقد أعطي فيها ما لم يعط; ليوقع فيها رجلا من المسلمين, فنزل قول تعالى: ﴿إن الذين يشترون بعهد الله وأيمانهم ثمنا قليلا أولئك لا خلاق لهم في الآخرة ولا يكلمهم الله ولا ينظر إليهم يوم القيامة ولا يزكيهم ولهم عذاب أليم﴾ (آل عمران: ٧٧), وقال -صلى الله عليه وسلم-: ((من حلف على يمين وهو فيها فاجر; ليقطع بها مال امرئ مسلم, لقي الله وهو عليه غضبان)) الحديث رواه البخاري.^{٣٨}

(Peace and blessings of Allah be upon him) said: "A person who has set the commodity in the market, (Peace and blessings of Allah be upon him) said:"

^{٣٦} مسلم بن الحجاج أبو الحسن القشيري النيسابوري ، المسند الصحيح المختصر بنقل العدل عن العدل إلى رسول الله صلى الله عليه وسلم جزء ٣، (العربي - بيروت: دار إحياء التراث)، ص. ٤٥١١

^{٣٧} مالك بن أنس بن مالك بن عامر الأصبحي المدني، الموطأ، مؤسسة زايد بن سلطان آل نهيان للأعمال الخيرية والإنسانية - أبو ظبي - الإمارات، الأولى، ٥٢٤١ هـ - ٤٠٠٢ م)، ص. ٥٨٩

^{٣٨} مناهج جامعة المدينة العالمية، التفسير الموضوعي ١، (جامعة المدينة العالمية)، ص. ٤٨٢

Whoever swears on the right and in it is a fugitive, to cut off the money of a Muslim man. And she was angry at him)) Hadith Bukhari

- 4) Specification of goods and its price should be known by the parties.
- 5) Sellers should indicate defective goods and costs, and did not try to hide it, so as to avoid ignorance or obscurity of goods or money, and buyers buy with confidence in order to avoid disputes.

قال -صلى الله عليه وسلم-: ((البيعان بالخيار ما لم يتفرقا، فإن صدقا البيعان، بورك لهما في بيعهما، وإن كذبا وكتما في نفسه أن يربحا ربحا، ويمحقا بركة بيعهما)) رواه مسلم، وقال -صلى الله عليه وسلم-: ((من باع يبيعا لم يبينه لم يزل في مقت الله، ولم تزل الملائكة تلعنه)) (سنن ابن ماجه).^{٣٩}

The Prophet (peace and blessings of Allah be upon him) said: "The sale of the estate is not permitted unless they are separated. ((Anyone who sells sales does not show it is still in an abomination of God and the angels still deplore)) Hadith of Ibn Majah history.

- 6) Buyers and sellers should be mutually tolerant in the transaction, and that the serious buyers in the purchase. Also, the seller does not sell stuff that was not hers, and sellers do not sell the goods before the goods are purchased. Buyers should be warned Al-Najash, namely to increase the price goods And do not want to buy it to win the merchants at the expense of jobs.

قال -صلى الله عليه وسلم-: ((لا تناجشوا)) رواه البخاري ومسلم.^{٤٠}

He (peace and blessings of Allah be upon him) said: "Do not against it." Hadith narrated by Bukhari and Muslim.

- 7) Sellers may not sell charcoal stolen, because the seller would engage in sin with thieves. Also in this case: The seller has no remorse, which means that the seller accepts the return of goods after the sell to buyers' requirements, or knowing that he did not need it and regret it because to buy

^{٣٩} مناهج جامعة المدينة العالمية، التفسير الموضوعي ٢، (جامعة المدينة العالمية)، ص. ١٣١
^{٤٠} لشافعي أبو عبد الله محمد بن إدريس بن العباس بن عثمان بن شافع بن عبد المطلب بن عبد مناف المطلي القرشي المكي، مسند الإمام الشافعي، (بيروت - لبنان: دار الكتب العلمية، ١٩٧٣ هـ - ١٥٩١ م)، ص. ٦٤١

4. Result of Akad

If the view of the purpose of the contract or the contract, the contract may give rise to ownership, solidarity and cooperation, guarantees, mandates and representatives, as well as representatives.⁴¹ According to Islamic Law Compilation Economic consequences caused by the contract, namely:⁴²

- a. All contracts are legally valid as sharia texts for those who hold a contract
- b. A contract not only for the stated expressly in it, but also to Segal things according to the nature of the contract required by decency, habits, and the texts of sharia
- c. A contract is only valid between the parties who hold a contract
- d. A contract may be canceled by the indebted party, if the party who owes proven acts that harm the parties indebted

B. Murabahah

1. Definition of Akad Murabaha

Etymologically, the term comes from the word ribhu murabaha which means profit. In science terms sharf, when using wazan murabaha, it means mutual benefit. Murabaha is selling an item with known by the buyer, and the margin that is also between the seller and the buyer.⁴³

Murabaha transaction is commonly done by the Prophet Muhammad and his companions. Simply put, murabaha means a sale of goods for the goods plus an agreed profit⁴⁴

While the terminology, according to Muhammad Shafi Antonio, murabaha is selling charcoal at the original price with the added advantage that is agreed upon. Which in vendor directly purchase murabaha should tell the price of the products he purchased and determining a level of

⁴¹ Juhaya S. Pradja, *Ekonomi Syariah*, ...p.121

⁴² Pusat Perjakian Hukum Islam dan Masyarakat Madani (PPHMM), *Kompilasi Hukum Ekonomi Syariah Buku II*, ...p.2

⁴³ مجموعة من المؤلفين، *الفقه الميسر في ضوء الكتاب والسنة جزء : ١*، مجمع الملك فهد لطباعة المصحف الشريف)، ص. ٨١٢

⁴⁴ Adimarwan A. Karim, *Bank Islam Analisis Fiqh dan Keuangan-Edisi Kelima*, (Depok : Rajagrafindo persada, 2016), p.113

profit as enhancements.⁴⁵

In Law Compilation of Islamic Economics, murabaha is financing the mutual benefit that is done by sahib al-meal to those in need through the purchase and sale transactions with the explanation that the procurement price and the selling price there is a value that is an advantage or profit for sahib al-mail and repayment is done in cash or gradual.⁴⁶

According to Law No. 21 of 2008 concerning Islamic Banking, is a murabaha contract is a financing agreement with the goods to the buyer confirms the purchase price and the buyer to pay a lower price as agreed profit.⁴⁷ And murabahah was initially known murabaha sales by legal experts advanced, in this modern era murabahah carried out by Islamic financial institutions or in the banking world. Murabaha according to experts law is sold at the original price with an additional increase in profits is known the two parties.⁴⁸

Then it can be understood that the terminology murabaha is buying and selling goods to declare the acquisition price and profit (margin) which is agreed by both parties the seller and buyer.

2. Provision of Murabahah

In Law Compilation of Islamic Economics explained that Murabaha is done gradually. Provisions validity of installment sales. The validity of installment sales plus continued sales conditions are as follows:⁴⁹

- a. That the goods are in the possession of the seller and he owned at the time of contract, it is not permissible for them. Harun said that the Prophet (peace and blessings of Allah be upon him) said: "Do not follow what you do not have."
- b. The buyer is not obliged - at the time of the contract or thereafter - to pay an excessive amount for what they have agreed upon the contract

⁴⁵ Muhammad Syafi'i Antonio, *Bank Syariah dari Teori ke Praktek*, ...p. 101

⁴⁶ Pusat Perjakian Hukum Islam dan Masyarakat Madani (PPHMM), *Kompilasi Hukum Ekonomi Syariah Buku II*, ...p.10

⁴⁷ UU No. 21 Tahun 2008 tentang Perbankan Syariah, Pasal 19 huruf d

⁴⁸ الأستاذ الدكتور حسام الدين بن موسى عفانة، فتاوى يسألونك الطبعة: الأولى جزء: ٢، (فلسطين: مكتبة دنديس، ٧٢٤١ - ٠٣٤١ هـ) ص. ٩٢٣

⁴⁹ مجموعة من المؤلفين، الفقه الميسر في ضوء الكتاب والسنة جزء : ١، ... ص. ٩١٢

- in the event of late payment of installments.
- c. It is unlawful for a buyer who fully delays in paying the installments.
 - d. There is no right for the seller to retain ownership of the sale after sale, but he may ask the buyer to ensure the sale on their own sales to guarantee the right to meet the deferred installments.

There are some requirements for murabaha contract, including:⁵⁰

- a. Cards need to be agreed. If the contract is broken, then it is not allowed to sell the first murabaha contract.
- b. Knowledge of the original price, required that the original price known by the buyer, the deal Murabahah demonstrate the validity of the sale, if he does not know the first price of the contract damage.
- c. Capital must be of treasure worth, If he is a Muslim, is allowed to sell murabaha did the original price. Not allowed to sell goods that are not offered in their possession.

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⁵⁰ جماعة من العلماء, تصدرها وزارة الأوقاف الكويتية، الموسوعة الفقهية الكويتية جزء ٦٣، (مصر: مطابع دار الصفاة، من ٤٠٤١ - ٧٢٤١ هـ)، ص. ٢٣.

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