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**THE CHARACTERISTICS OF MURABAHAH AKAD
WITH BA'I AL-WAFA' SYSTEM****Siti Nur Shoimah, Dyah Ochtorina Susanti & Rahmadi Indra Tektona**
Student and Lecturer Postgraduate Program of Jember University**Abstract**

This research is motivated that ba'i al-wafa' system is a form of buying and selling widely used by society and financial institutions. The validity of this akad is considered valid and do not consider it valid, because there are conditions to buy back the goods sold by the seller while buying and selling on conditions is not allowed in Islamic economics. In practice, there is also a profit (margin) that is not following the concept of ba'i al-wafa' because it has no profit (margin), and this is not following sharia principles. The solution to overcome this is to combine ba'i al-wafa' system with a murabahah akad. The results of the study using the normative legal research with the statute approach, conceptual approach, and comparative approach is that the characteristics of the murabahah akad with the ba'i al-wafa' system can be seen from five things, namely in terms of Subject, Object, Price, Profit (Margin), and The Promise of Repurchase. In the final part of this research, the researcher also provides advice the Indonesian Ulema Council (MUI), should issue a Fatwa related to the validity of the murabahah akad with the ba'i al-wafa' system which breaks down the KHES, and to Bank Indonesia, should issue a rule in the form of a Bank Indonesia Regulation which in that regulation regulates the types of akad that can be used by Islamic banking in carrying out their operational activities, one of which is the murabahah akad with the ba'i al-wafa' system.

Keywords: Characteristics, Murabahah Akad, Ba'i al-Wafa' System

Background

Murabahah akad is a type of akad that is often using in everyday life, not least in the banking sector. In Islamic banking, murabahah is one of the akad that are in great demand by the public, because in addition to being able to help people (customers) who do not have funds (money) to meet their needs. This akad is also simple and has lower risk, both from the bank or customer.¹ In connection with the definition of a murabahah akad,

¹ <https://finansial.bisnis.com/read/20190915/90/1148536/akad-murabahah-dominasi-pembiayaan-bank-syariah>, accessed on 12 March 2021. See also Tim Penyusun Otoritas Jasa Keuangan. *Statistik Perbankan Syariah, Periode September 2020*. (Jakarta: Otoritas Jasa Keuangan, 2020), p. 27.

linguistically, murabahah comes from the word al-rabh which means excess or increase², and comes from the ribhu, which means profit, in this case, it is intended as the profit mentioned in the sale and purchase.³ Concerning the definition in terms, a murabahah akad is the sale and purchase of goods at a cost plus a certain agreed profit. In practice, murabahah is a type of sale and purchase transaction with a profit (margin), meaning the sale and purchase of goods at the original price plus the agreed profit.⁴ Murabahah akad is also defined as the sale and purchase of goods with the cost of goods plus certainly agreed to profits. In line with this understanding, Ibn Muqadaman in Muhammad defines murabahah as buying and selling activities, where the seller sells at the original price, plus a mutually agreed profit.⁵

Based on the definition of murabahah can be understood that basically murabahah is a sale and purchase agreement with an agreement to give profit to the seller by looking at and calculating the seller's initial capital. In this regard, in Islamic law, murabahah akad can be used because both parties agree with each other, especially concerning the profits obtained by the seller. This is like Q.S. An-Nisa' Verse 29, whose translation is:

*“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 your ever Merciful.”*⁶

The verse above shows that Allah SWT has allowed (halal) buying and selling and forbids (haram) Muslims from consuming others' property by vanity. Examples by stealing, corruption, cheating, robbing, extorting, and other ways that are not justified by Islamic law, except by way of commerce or buying and selling based on a consensual basis. Likewise, with murabahah akad, the profits obtained by the seller are known and agreed upon by the buyer, where it is marked by an exchange of goods, namely the buyer gets the goods he wants so that the ownership of the goods automatically shifts to the buyer, while the seller gets the payment money along with the profits from the sale the item.

In connection with the explanation above, it is also necessary to know and understand that not everyone sells their goods because they want to sell the goods, but because there are demands that must be met and require funds. Considering in the community, people who are financially able (rich) usually do not want to lend money to people in need voluntarily without getting anything in return.⁷ This reward often causes usury because the excess (loan interest) demanded by the owner of the property burdens people who need funds. In this regard, to avoid the existence of usury as intended, sharia economic law provides a solution in the form of using the ba'i al-wafa' system.

Sayyid Sabiq in Sri Sudarti argues that ba'i al-wafa' is a sale and purchase carried out by someone who needs money and sells the goods with a promise that if the price of the goods has been paid in full (paid back), the goods can be returning to the seller.⁸ Bai' al-wafa' is also interpreted as a buying and selling activity carried out between two parties on the condition that the goods sold can be buying back by the seller if the specified grace period has arrived.⁹ Its means, buying and selling in this system contains a limited grace period, for example, one year, so that when one year has expired, the seller can buy back the goods he has sold to the original buyer.¹⁰

² Ahmad Warson Munawwir. *Al-Munawwir, Kamus Arab-Indonesia, Cet. IV.* (Surabaya: Pustaka Progressif, 1997), p. 463.

³ Burhanuddin. *Hukum Kontrak Syariah.* (Yogyakarta: BPFE, 2009), p. 82.

⁴ Muhammad Syafi'i Antonio. *Bank Syariah dari Teori ke Praktik.* (Jakarta : Gema Insani Press, 2001), p. 101.

⁵ Muhamad. *Sistem & Prosedur Operasional Bank Syariah.* (Yogyakarta: UII Press, 2003), p. 23.

⁶ Departemen Agama RI. *Al-Qur'an dan Terjemahannya.* (Jakarta Timur: Darus Sunnah, 2002), p. 84.

⁷ Sri Sudarti. *Ba'i Al-Wafa': Permasalahan Dan Solusi Dalam Implementasinya.* *Analytica Islamica*, Vol. 5, No. 1, 2016, p. 173.

⁸ Asa'ari. *BAI'UL WAFAN` (Review Penggunaan Dalil Mashlahah di Kalangan Hanafiyah).* *Jurnal Islamika*, Vol.13 No. 1 Tahun 2013, p. 79.

⁹ Abbas Arfan. *99 Kaidah Fiqih Muamalah Kulliyah. (Tipologi Dan Penerapannya Dalam Ekonomi Islam Dan Perbankan Islam).* (Malang: UIN-Maliki Press, 2013), p. 131.

¹⁰ *Ibid.*

In connection with the explanation above, the ba'i al-wafa' system itself is often using one of which is at BMT UGT Sidogiri Wonokerto Branch. The application of the ba'i al-wafa' system at BMT is that the customer sells his motorbike at IDR. 6,000,000 (Six Million Rupiah), but the BMT only wants to buy 50% of the market price, after being estimated by the BMT the price is IDR 3,069,000 (Three Million Sixty Nine Thousand Rupiah) plus a margin of 2.3% (Two points Three Percent) for the repayment of the loan. After the ownership of the bicycle is transferred to the BMT, the BMT then leases the vehicle to the same customer (the seller) with payment in installments for one year. After the installment is paid off, the customer can repurchase his motorcycle at the same price, which is 50% (Fifty Percent) of the market price plus a profit margin following the agreement that occurred at the beginning of the akad.¹¹

Based on the application of the ba'i al-wafa' system above, there is a problem that there is a requirement to repurchase goods sold by the first party (first seller), while the sale and purchase with conditions as happened in the application of ba'i al-wafa' above according to Islamic law are not allowed. This is as the hadith of the Prophet Muhammad SAW which means:

Amer bin Syu'aib from his father from his grandfather said the Prophet SAW, said: "It is not permissible to borrow and buy and it is not permissible to have two conditions in the sale, and it is not permissible to take advantage of what cannot be guaranteed. it is not permissible to sell what is not available to you.(Narrated by Akhmad, Abu Daud, Tirmidhi, Nasa'i, and Ibn Majjah were confirmed by Tirmidhi, ibn Khuzaimah, and al-Hakim and narrated by Abu Hanifah with the sentence "The Prophet SAW forbade the sale on condition").¹²

The next problem is regarding the existence of profit (margin) in the selling price, BMT has even determined the margin (in percentage form) before buying and selling transactions (buyback) are carried out. Whereas, in the ba'i al-wafa' system there is no profit (margin) either for the buyer or the seller because the repurchase price is the same as the initial price. This provision is regulating in Article 112 paragraph (1) Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law (referred to as KHES). That regulation which explains that buying and selling depend on the right of redemption a seller can return the money for the goods purchased.

The above shows that the application of the ba'i al-wafa' system in practice is not following sharia principles because it still contains elements of conditional buying and selling which are prohibiting by Islamic law and the existence of a margin that is not following the concept of ba'i al-wafa' system. In this regard, to overcome these problems, there are types of akad that can be using is murabahah akad with the ba'i al-wafa' system. The murabahah akad with the ba'i al-wafa' system is the result of the merger of 2 (two) namely the murabahah akad and the ba'i al-wafa' system, which of course has characteristics and different mechanisms from other buying and selling akad, with the aim of meeting the needs (funds/money) and the customer's desire to get or buy the goods back without violating the sharia principle.

Based on the explanation as described above, the authors are interested in conducting analysis and study of the merger of these 2 (two) akad, namely the murabahah akad and the ba'i al-wafa' system, which is packaging in the form of a scientific paper with the title "The Characteristics of Murabahah Akad with Ba'i Al-Wafa' System".

¹¹ See Naghfir. *Efektivitas Akad Pembiayaan Bai' Al- Wafa'*. Arena Hukum, Vol. 10, No. 1, April 2017, p. 3.

¹² Salim Bahreisy dan Abdullah Bahreisy. *Tarjamah Bulughul Maram Min Adillatil Ahkam*. (Surabaya: Balai Buku, 1992), p.

Research Method

The research method in writing this scientific paper is normative (doctrinal) research methods, which is a process to find the rule of law, legal principles, and doctrines to answer the legal issues being studied.¹³ Doctrinal or normative legal research also has the meaning of research whose objects of study are statutory regulations and library materials.¹⁴ Doctrinal or normative legal research also has the meaning of research whose objects of study are statutory regulations and library materials. In the implementation of the use of this method, there are 3 (three) approaches used, namely: first, the legal approach to reviewing the rules governing the murabahah akad with the ba'i al-wafa' system; second, a conceptual approach to examine the characteristics of murabahah akad with the ba'i al-wafa' system, which can be found in legal books and journals; and the three comparative approaches are using to compare buying and selling according to the western legal system (*Burgerlijk Wetboek / BW*) and buying and selling in the Islamic legal system to find the characteristics of murabahah akad with the ba'i al-wafa' system.

Discussion

Ba'i al-wafa' system is a form of buying and selling widely used by society and financial institutions. Murabahah is a type of sale and purchase transaction with a profit margin, meaning buying and selling goods at the original price at an agreed additional profit price.¹⁵ Murabahah also has the meaning of a mutually beneficial akad between the shahibul mal and the party in need through a buying and selling transaction with the explanation that in the price of the goods there is an excess value which is calculating as profit for the shahibul mal.¹⁶ Implementation in a murabahah akad in Islamic banking, the customer can make payments in 2 (two) ways, namely by installments (installments) or cash, where the amount of the price paid comes from the cost of purchase plus a profit margin. The agreed price may not change until the agreed period arrives and ends.¹⁷

The development of the times is increasingly rapid, numerous other muamalah products appear, like the ba'i al-wafa' system. The bai' al-wafa' system is a sale and purchase accompanied by the condition that the good the seller can buy back if the agreed deadline has arrived.¹⁸ According to a fiqh figure from Syiria named Mustafa Ahmad Zarqa in Abdul Aziz Dahlan, bai' al-wafa' is an akad sale of two parties, where at a specified time, that goods can be buyback at the first price. The goods traded are immovable goods, such as plantation land, rice fields, houses, and many more.¹⁹ In the Islamic banking environment, the ba'i al-wafa' akad is still unknown and has not even been doing. in the community and even other institutions, this akad has been widely carried out such as Baitul Maal wa Tamwil (BMT).

Implementation of the ba'i al-wafa' akad is still a debate among academics and academics because if you look more closely, in the ba'i al-wafa' system the conditions are in the form of repurchasing the goods sold. The seller will sell the goods on a term that within a certain period, the goods will be buyback, and buying and selling with this model is certainly prohibited in Islam. In this regard, the researchers analyzed by combining the two akad as mentioned above into a murabahah akad with the ba'i al-wafa' system. The merging of these two akad is a finding of a new akad in the field of sharia banking, in which the akad has a goal, namely to create something valuable and beneficial for the community. Murabahah akad with the ba'i al-wafa' system, although in the merger there is a murabahah akad, the murabahah is not a form of financing, but purely as a sale and purchase.

¹³ Dyah Ochterina Susanti dan A'an Efendi. *Penelitian Hukum (Legal Research)*. (Jakarta: Sinar Grafika, 2014), p. 3.

¹⁴ Soejono dan Abdurrahman. *Metode Penelitian Hukum*. (Jakarta: Rineka Cipta, 2003), p. 56.

¹⁵ Muhammad Syafi'i Antonio. *Bank Syariah dari Teori ke Praktik*. (Jakarta : Gema Insani Press, 2001), p. 101.

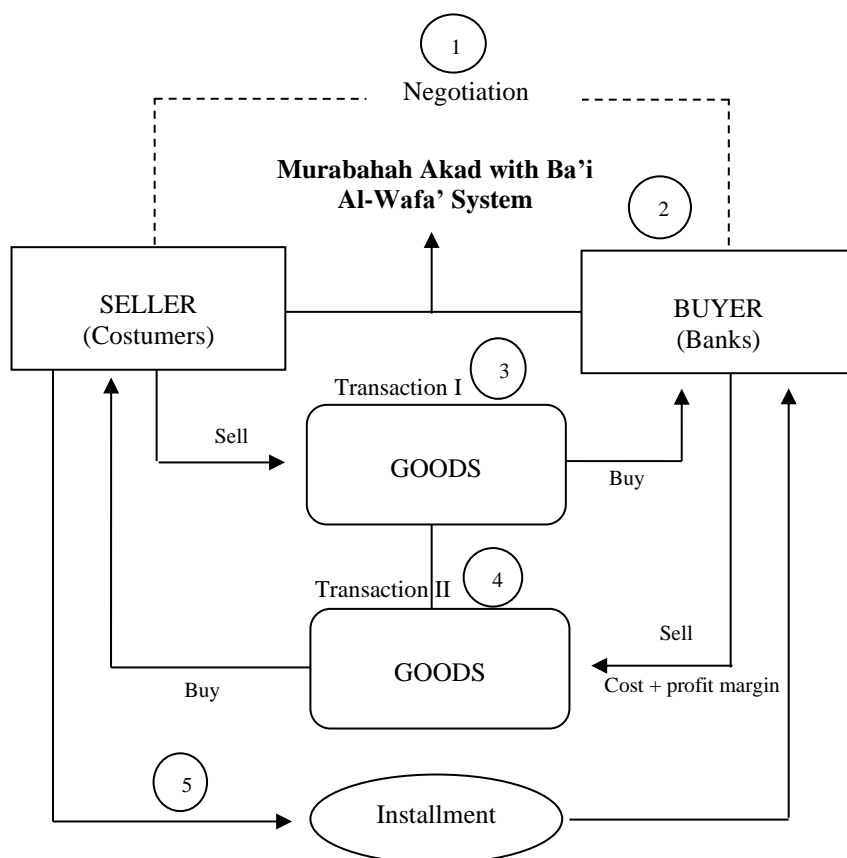
¹⁶ Article 20 point 6 Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law.

¹⁷ Dyah Ochterina Susanti. *Pelaksanaan Perjanjian Pembiayaan Murabahah Dengan Sistem Bai'u Salam Ditinjau Dari Sudut Pandang Hukum Islam (Studi pada PT. BPRS Daya Artha Mentari Bangil – Pasuruan)*, Tesis (Malang: Program Pascasarjana Fakultas Hukum Universitas Brawijaya, 2006), p. 112.

¹⁸ Article 20 point 41 Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law.

¹⁹ Abdul Azis Dahlan, (ed.). *Ensiklopedi Hukum Islam*, Jilid 5. (Jakarta: Ichtiar Barn van Hoeve, 1996), p. 176.

Because the akad mechanism is also different from murabahah financing as contained in one of the Islamic banking products. In this regard, in more detail, the following is the scheme of the murabahah akad with the ba'i al-wafa' system.



Picture 1: Scheme Murabahah Akad with Ba'i Al-Wafa' System

Source: Author's Personal Note, processed, 2021

Based on the chart above, it can be seen the stages in the application of the murabahah akad with the ba'i al-wafa' system, namely:

1. The seller (customer) comes to the buyer (bank) to sell the goods. The first stage is the negotiation which is divided into 2 (two), namely the first, the negotiation related to the 1st transaction, in which the seller sells the goods to the buyer at the cost or acquisition price offered by the seller. In this regard, in the process, the seller and the buyer negotiate the description of the goods, as well as the price until they both agree. Second, negotiations are related to the second transaction. The seller conveys his desire to buy back the goods he sells to the buyer, and the buyer sells the goods by offering a price different from the first selling price. The difference is because the selling price in this 2nd transaction has a mutually agreed profit margin.
2. After negotiating and the parties agree, then a murabahah akad is made with the ba'i al-wafa' system in which there are 2 (two) transactions, namely ordinary buying, and selling transactions, and murabahah akad transactions using the ba'i al-wafa' system.
3. In the 1st transaction (ordinary sale and purchase transaction), the seller (customer) sells the goods to the buyer (bank), in which case the seller is obliged to deliver the goods he sells, while the buyer (bank) is obliged to make payment for the goods he bought. in cash.
4. In the 2nd transaction (murabahah akad transaction with the ba'i al-wafa' system), the buyer (bank) sells the goods to the seller (customer) according to the will of the seller (customer) who wants to buy back the goods at the selling price plus a margin profit according to mutual agreement.

5. The last stage, the seller makes payments in installments, the amount and period of which is following the agreement of both parties.

Based on the stages of the murabahah akad mechanism with the ba'i al-wafa' system as described above, it can be found several elements that can be used as benchmarks for the characteristics of the murabahah akad with the ba'i al-wafa' system, namely:

1. Subjects in the Murabahah Akad with the Ba'i Al-Wafa' System

The parties in the murabahah akad with the ba'i al-wafa' system are the customer as the seller (ba'i) and the bank as the buyer (musytari'). The mention of the parties involved in this akad with the terms contained in Islamic mu'amalah has indirectly implied the spirit of Islamic mu'amalah. The parties referred to may be individuals, groups of people, partnerships, or business entities.²⁰ Related to this, in this akad, the parties have 2 (two) roles, namely, in the 1st transaction the customer is the seller, while the bank is the buyer, and vice versa in the second transaction the customer is the buyer, while the customer is the seller.

The parties who carry out the akad in this akad are following what is required by Islamic Shari'ah and applicable civil law, namely legal competence (in Islam it is also known as tamyiz²¹), healthy in mind (not crazy, not under guardianship), and has grown to become the main requirement for the parties to the agreement (the subject of the agreement). Regarding the criteria for adulthood, in Islam, it is known as baligh, namely if you are 15 years old, or have had a wet dream (for boys) and menstruation (for girls). This is different from the adult criteria according to Article 330 BW, namely if you are 21 years old and married, while the adult age in Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, 19 years both male and female.

2. Objects in the Murabahah Akad with the Ba'i Al-Wafa' System

Concerning the object in the murabahah akad with the ba'i al-wafa' system, of course, the bank as the buyer does not directly buy the goods sold by the customer, but the bank conducts a survey and assessment first of the goods. This survey was conducted to prevent banks from buying prohibited, unclear (gharar) goods because Islam is very concerned about the halal aspect both in its acquisition and utilization. As the Prophet Muhammad SAW once said, that in the hereafter, one of the things that will be held accountable for man is about his wealth, how it is obtaining and using for it. Concerning objects traded in murabahah akad with the ba'i al-wafa' system, they must be halal (not prohibited by Islamic sharia) as regulated in the first part point 2 of the Fatwa of the National Syari'ah Council Number 04/DSN-MUI/IV /2000 on Murabahah:

“Goods that are traded are not forbidden by Islamic Sharia”

If it is related to the conditions for the validity of the akad, namely the halal causa, then the above provisions have emphasized that in the agreement, the nature of the object must be cleared, namely regarding the halal or haram of the object. Before the goods are purchased, the buyer must first see and check the goods to be sold by the seller. In connection with this, Lukman Hakim stated that the object of the agreement must fulfill the following matters:²²

²⁰ See Article 23 paragraph (1) Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law

²¹ Tamyiz is a trait that can distinguish between good and bad. <https://kbbi.web.id/tamyiz>, accessed on 18 May 2021. Tamyiz also has the meaning of being able to realize and know the contents of the words spoken so that his words truly express his heart's desire. In other words, Ijab and qabul must be people who are capable of taking legal actions. See Afdawaiza, *Terbentuknya Akad dalam Hukum Perjanjian Islam*, Al-Mawarid Edisi XVIII Tahun 2008, p. 184.

²² Lukman Hakim. *Prinsip-Prinsip Ekonomi Islam* (Jakarta: Penerbit Erlangga, 2012), p. 111-112. See also Article 24 Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law.

- a. Holy, unclean items, such as animal skins or uncooked carcasses.
- b. There are benefits, meaning that goods sold or bought must have benefits, as the word of Allah SWT in Q.S. Al-Isra Verse 27.²³
- c. The item can be delivered. The goods purchased can be delivered directly to the buyer.
- d. The goods are the property of the seller.
- e. Sellers and buyers know the goods that are the object.

In connection with the object in the murabahah akad with the ba'i al-wafa' system consists of 2 (two) types, namely movable and immovable property. In practice, before the customer and bank into the akad, the bank and customer negotiate first to ensure the type of object/goods and the origin of the object/goods. This is following what is implied in the book of fiqh mu'amalah in Islam as explained in Dyah Ochtorina Susanti, that the goods must be clear in their type, characteristics, quality, quantity, and the goods must be present at maturity.²⁴ In this regard, it is also necessary to understand that following Islamic sharia and article 1320 BW, one of the conditions for the validity of the akad is a halal causa, if the halal conditions of this object are violating, then the agreement is null and void and is considered to have never existed or better known as null and void the law because the objective conditions are not following the provisions.²⁵

A. Price and Profit (Margin) in Murabahah Akad with Ba'i Al-Wafa' System

The exchange rate of goods or prices is one of the most important elements in every buying and selling transaction. The measure of the exchange rate of the goods at this time is currency. In each transaction, the price must be clear and agreed upon by the seller and the buyer. In this regard, fiqh scholars state that the conditions for the price are as follows:²⁶

1. The price agreed by both parties must be clear.
2. Can be submitted at the time of the transaction. If the goods are paid later (indebted), then the payment period must be clear.
3. When buying and selling by barter, the goods are used as exchange value are not goods forbidden by syara' such as pork and khamr, because the two types of objects are of no value according to syara.

In the murabahah akad with the ba'i wafa' system, the exchange rate of goods or prices is divide into 2 (two) transactions: first transaction, namely the bank gives money to the customer for the goods it sells in cash so that the goods turn into the property of the bank. The exchange rate for these goods is the price agreed upon between the bank and the customer. The second transaction, where the customer submits the money to the bank for the purchase of the same goods at the selling price plus a mutually agreed profit margin and is paid in installments (installments). The price based on this agreement will not change until the installment period ends. Based on the illustration, it can be found that in this akad, the price is divided into 2 (two): first, the cost of goods or also called the cost of goods, and second is the selling price plus profit margin.

1. Cost of Goods

In the implementation of the first transaction, what is meant by the cost of goods in a murabahah akad with the ba'i al-wafa' system is the price when the bank buys goods from the customer, in which case the customer offers the price later. Bank and customer agree on the price. In this regard, Wiroso gives his opinion that the cost of goods is the value of an item, namely the process of procuring goods until the goods have value.²⁷

²³ Q.S. Al-Isra' Verse 27, yang terjemahannya yaitu: "Indeed, the wasteful are brothers of the devils, and ever has Satan been to his Lord ungrateful."

²⁴ Dyah Ochtorina Suanti. *Op. Cit.*, p. 124.

²⁵ Subekti. *Hukum Perjanjian, Cetakan ke-17*. (Jakarta: Intermasa, 2001), p. 17. See also Nanin Koeswidi Astuti. *Analisa Yuridis Tentang Perjanjian Dinyatakan Batal Demi Hukum*. Jurnal Hukum to-ra, Vol. 2 No. 1, April 2016, p. 28.

²⁶ M. Ali Hasan, *Berbagai Macam Transaksi dalam Islam (Fiqh Muamalat)* (Jakarta: RajaGrafindo Persada, 2003), p. 124-125.

²⁷ Wiroso. *Jual Beli Murabahah*. (Yogyakarta : UII Press, 2005), p. 61.

Related to this, what is called the cost of goods is the price of the goods traded, the cost of procurement of the goods if represented, and the value or the acquisition price itself.²⁸ Regarding the murabahah akad with the ba'i al-wafa' system, in this case, the customer sells land to the bank with an agreement on the cost or acquisition cost of IDR 100,000,000 (one hundred million). The price is the price obtained by the customer for bank payments in cash.

2. Selling Price and Profit (Margin)

The selling price and profit margin are contained in the second transaction, namely, the cost of goods plus the profit agreed between the seller and the buyer. Banks and customers in this transaction have a different role from the first transaction, where the bank acts as a seller while the customer acts as a buyer. For example, a bank sells land to a customer at a price of IDR. 110,000,000 (One Hundred and Ten Million Rupiah), of which IDR. 10,000,000 (Ten Million Rupiah) is a profit margin for the bank. The customer and the bank then negotiate (bargain price) until an agreement is reached. In this process, the bank offers the period required by the customer to pay off the purchase of the item. This shows that in this 2nd akad or transaction, payments are made in installments (installments).

Muwatta' and Syafi'i with his Kitab al-Umm in Noor Sulaiman in Dyah Ochtorina Susanti, no doubts high prices for deferred payments and lower prices for cash payments and such things are legal.²⁹ In Islamic banking, there are arguments to support the validity of higher prices for sales with delayed payments, namely:³⁰ Therefore, it is not the same as usury which is prohibiting in the Qur'an; 4) increases are paid at the time of sale, not after the sale occurs; 5) increase due to factors affecting the market; 6) the seller conducts a commercial business; 7) the seller is allowed to pay whatever price he wants. The ba'i al-wafa' akad does not recognize a profit (margin). But this akad has been modified, namely, it is has combined with a murabahah akad which has a characteristic in the form of a profit (margin), so that the selling price is the accompanying by a profit margin. The existence of a profit margin obtained by the bank is certainly not without reason has based on calculations of operational costs incurred by the bank, such as administrative costs, costs for employee salaries, and others.³¹ The profit margin in the murabahah akad with the ba'i al-wafa' system is also guided by the fiqh rules, namely:

"Basically, all forms of mu'amalah can be done unless there is evidence that forbids it"

Based on the above, profit (margin) taking based on bank policy is allowed. In this regard, one thing that is interesting in determining the profit (margin) is that before an agreement has reached on the amount of the profit (margin), the customer and the bank can offer each other the profit (margin) as described above. Furthermore, when both parties agree, the wishes or results of the agreement are stated in a written agreement.

B. Collateral in the Murabahah Akad with the Ba'i Al-Wafa' System

Collateral or also known as daman has the meaning of guarantee, where daman itself is identical with collateral in the form of property or valuable goods.³² This guarantee is a form of the bank's prudence towards its customers, where the guarantee is one way to reduce risk in every transaction in the banking world, including Islamic banking. Collateral or deferred is an item has used as a confirmation or reinforcement of trust in accounts payable.³³ The collateral is also a second solution if the customer cannot settle his obligations, namely by selling the collateral to fulfill his obligations, of course in a fair way (according to the price prevailing at that time).

²⁸ *Ibid.*

²⁹ Dyah Ochtorina Susanti. *Op. Cit.*, p. 128.

³⁰ Wiroso, *Op. Cit.*, p. 95.

³¹ Dyah Ochtorina Susanti. *Op. Cit.*, hlm. 129

³² Adiwarman Karim. *Ekonomi Islam: Suatu Kajian Kontemporer*. (Jakarta: Gema Insani, 2001), p. 10.

³³ Sulaiman Rasjid. *Fiqh Islam*. (Bandung : Sinar Baru Algensindo, 2001), p. 309.

Collateral or also known as collateral is regulated in Article 1 point 23 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, which explains that:

"Collateral is a guarantee for offering offers to banks to obtain credit or financing facilities based on sharia principle."

There is also in the Sharia Banking Law which does not mention the term, but will use the word collateral, so the meaning is as contained in Article 1 point 26 of the Sharia Banking Law, namely:

"Collateral is an additional guarantee, either in the form of movable or immovable property to a Sharia Bank and/or Sharia Business Unit, to guarantee the settlement of the obligations of the customer receiving the facility."

In the context above, the collateral or guarantee in question is an additional guarantee (*accessoir*) that aims to obtain facilities from the bank to sell customer goods in a *murabahah akad* with the *ba'i al-wafa'* system. This collateral is needed considering that in the second transaction in this *akad*, payment for the purchased goods is made in installments (*installments*). Another definition of guarantee is also explained by Mariam Darus Badruzaman in Nurma Khusna Khanifa who argues that collateral is the fulfillment of obligations that can be valued in money arising from a legal engagement. so, the law of collateral is very closely related to the law of objects.³⁴ So, the law of guarantee is very closely related to the law of objects. In line with this understanding, Hartono Hadisoeparto argues that a guarantee is something that is giving as a form of confidence that the debtor will fulfill obligations that can be valued in money arising from an engagement.³⁵

Likewise, with *murabahah akad* with the *ba'i al-wafa'* system, based on this understanding, with the collateral that is on the bank, it will be able to provide confidence that the customer will pay off the payment for the purchase of goods following the agreement. In this regard, to provide such assurance, the goods that are guarantee must meet the legal/judicial and economic requirements that are good and correct, which include:³⁶

- 1) The collateral must have a tangible form;
- 2) The collateral must belong to the customer with authentic documents;
- 3) If the collateral is in the form of authorized goods, the owner must participate in signing the *akad* or agreement;
- 3) The collateral is not in the court process or a state of dispute;
- 4) Collateral are not affected by government projects.

In connection with the explanation above, in the application of this collateral, Islamic banks are based on several *shari'ah* foundations, namely Q.S. Al-Baqarah Verse 283 which translates:

"And if you are on a journey and you do not find a writer, then let there be collateral to hold. But if some of you believe in others, let the believer fulfill his mandate (debt) and let him fear Allah, his Lord."

The application of collateral in Islamic banking is also regulating by the Fatwa of the National *Syari'ah* Council No. 04/DSN-MUI/IV/2000 concerning *Murabahah* on the third point, which contains:

"Third: Collateral in *Murabahah*

1. Collateral in *Murabahah* are allowed so that customers are serious about their orders.
2. Banks may ask customers to provide collateral."

The fatwa above does not provide a detailed explanation of the type of collateral. So, Islamic banks have the freedom to determine the provisions regarding the collateral used as a "safety" in each of their *akad*.

³⁴ Nurma Khusna Khanifa. *Jaminan Akad Murabahah di Lembaga Keuangan Syariah Kajian Hukum Perdata*, Jurnal Az *Zarqa'*, Vol. 7, No. 2, December 2015, p. 258.

³⁵ Salim Hs. *Mengenal Hukum Suatu Pengantar*. (Yogyakarta: Liberty, 1999), p. 22.

³⁶ Malayu SP Hasibuan. *Dasar-Dasar Perbankan*. (Jakarta: Citra Aditya Bakti, 2001), p. 110.

In this regard, in his research, Dyah Ochterina Susanti mentions that the ideal collateral in a sharia bank is a collateral that meets the requirements, including:³⁷

- 1) Which can easily assist the acquisition of a transaction (in this case a sale and purchase transaction) by the party who needs it.
- 2) Which does not weaken the potential/strength of the buyer of the goods in installments of the goods he bought.
- 3) Gives certainty to the seller that at any time the collateral can be executed or cashed immediately, to pay off the cost of purchasing the goods by the buyer.

There is regarding collateral in every akad in sharia banking, and in connection with the existence of collateral conditions to reduce any risk then in the murabahah akad with the ba'i al-wafa' system, other than the goods being traded are the object of the agreement, goods This is also an object of collateral so that the bank is not entitled to sell the goods to other parties until the customer pays the purchase price of the goods. Considering that in this akad there is a right of redemption from the buyer (customer) for the second transaction that contains the ba'i al-wafa' system. This statement is in line with the provisions of Article 113 of the Regulation of the Supreme Court Number 2 of 2008 concerning the Compilation of Sharia Economic Law (KHES), which contains:

"Goods in a sale and purchase that depend on the right of redemption, may not be sold to other parties, either by the seller or by the buyer, unless there is an agreement between the parties."

In connection with the explanation above, the object of buying and selling as well as collateral as long the installments are still in progress, no rule prohibits it until now. Based on the rules of fiqh that as long there are no restrictions, all mu'amalah activities are allowed, include is making the object of buying and selling as collateral. This is also in line with the BW which regulates the permissibility of the collateral as referred to, namely Article 1131 BW states that:

"All the debtor's property, both movable and immovable, both existing and new in the future, are borne by all individual engagements."

Based on the above provisions, all objects belonging to the seller (the Islamic bank or the buyer as the seller) can be used as collateral. Regarding the murabahah akad with the ba'i al-wafa' system, objects both movable and immovable, can be used as collateral.

C. Murabahah Akad with Ba'i Al-Wafa' System which is similar to Two Akad

In this murabahah akad with the ba'i al-wafa' system, it seems that it contains 3 (three) types of transactions, namely:³⁸

- 1) Sale and purchase transaction
The transaction occurs when the seller gives an ijab "I sell my land to you for one hundred million rupiahs.", then the buyer receives the goods accompanied by the delivery of money as the selling price.
- 2) Ijarah transaction
After the ijab qabul is proceeded, and the goods are transferring to the buyer (bank), the seller (customer) buys back the goods. The goods or certificates of ownership are not giving to the seller because of the seller's buyback in installments. The goods or certificate of ownership will be delivering after the seller (customer) has paid the payment according to the agreed period. At this stage, it is as if it resembles a lease transaction (ijarah).

³⁷ Dyah Ochterina Susanti. *Op. Cit.*, p. 135.

³⁸ Dewi Wulan Fasya. *Jual Beli dengan Hak Membeli Kembali (Studi Komparasi Antara Kitab Undang-Undang Hukum Perdata dan Fikih Syafi'i)*. Jurisdictie: Jurnal Hukum dan Syariah Vol. 6 No. 1, 2015, p. 655.

3) Pawn transaction

At the end of the akad, when the agreed grace period is due, the murabahah akad with the ba'i al-wafa' system resembles a pawn transaction. Because with the expiration of the period agreed upon by the parties, the seller must pay off the payment for the goods he purchased according to the agreement at the beginning of the akad/transaction.

In connection with the above explanation, it is necessary to re-understand that in the implementation of the murabahah akad with the ba'i al-wafa' system, of the three transactions above, there are 2 (two) transactions namely ijarah and pawn, which is not included or not contained in the murabahah akad with the ba'i al-wafa' system, the implementation seems to resemble an ijarah transaction or a pawn transaction. because, from the beginning of the agreement, the murabah akad with the ba'i al-wafa' system is a sale and purchase transaction, so that the transaction is in the form of buying and selling, not leasing (ijarah) or pawning.

Based on the explanation above, to find the characteristics of the merging of murabahah and ba'i al-wafa' system into murabahah akad with the ba'i al-wafa' system, it can be seen in the table of differences and similarities between murabahah akad, ba'i al-wafa' system, and murabahah akad with the ba'i al-wafa' system below.

Table 1: Differences and Similarities between Murabahah Akad, Ba'i Al-Wafa' System, and Murabahah Akad with the Ba'i Al-Wafa' System

Num.	Benchmark	Murabahah Akad	Ba'i Al-Wafa' System	Murabahah Akad with Ba'i Al-Wafa' System
1.	Subject	Seller (customer) and Buyer (bank) (only one transaction)	The first transaction: Customer as seller, Bank as buyer The second transaction 2: Customer as a buyer, and Bank as seller	The first transaction: Customer as seller, Bank as buyer The second transaction 2: Customer as a buyer, and Bank as seller
2.	Object	Movable and Immovable Objects	Immovable Objects	Movable and Immovable Objects
3.	Price	Selling price plus profit (margin)	The first transaction and second transaction, the selling price and the buyback price are the same. (unknown profit)	Prices consist of 2 (two) types, namely: the first transaction in the form of cost/acquisition; the second transaction, in the form of the selling price plus profit (margin)
4.	Collateral	There is a collateral (if payment is in installments)	There is a collateral. Collateral in the form of the object that was agreed	There is a collateral. Collateral in the form of the object that was agreed
5.	Practice	The seller (customer) sells goods to the buyer (bank) with a profit (margin), paid in cash or installments.	The seller (customer) sells the goods to the buyer (bank) with the terms that within a certain period, the goods will be bought back. (only one transaction with terms of purchasing)	The First Transaction: The seller (customer) sells the goods to the buyer (bank) at a price according to the agreement The Second Transaction: At the same time, the buyer (bank) sells the goods back to the seller (customer) at the

				selling price plus a mutually agreed profit (margin).
6.	Promise to buy back	No promises to buy back	There are promises to buy back that have not been fulfilled)	there is a promise to buy back that has been fulfilled, even though the payment has not been paid off
7.	Payment	Payment in cash, or in installments according to the agreed period.	Payments in the first transaction are pay in cash when the akad takes place, and payments in the second transaction are pay when the term has expired. (while waiting for the period to expire, the buyer rents the goods to the seller.)	Payment is made from the beginning of the akad. The first transaction in cash, and the second transaction in installments according to a mutually agreed period.
8.	Similar Transactions	Nothing	1. Ijarah transaction 2. Pawn transaction (In practice, the ba'i al-wafa' system contains ijarah transactions and pawn transactions)	1. Ijarah transaction 2. Pawn transaction

Source: Author's Personal Note, processed, 2021

Conclusion

Based on the discussion above, the authors conclude that the characteristics of the murabahah akad with the ba'i al-wafa' system, include: **First**, in terms of the subject, where the parties in this akad have 2 (two) roles, namely in the first transaction, customer (seller) as seller, and bank (buyer) as a buyer. Then in the second transaction, the customer is the buyer, and the bank is the seller. **Second**, in terms of the object, wherein this akad, the object consists of 2 (two): movable and immovable objects. **Third**, in terms of price, in the murabahah akad with the ba'i al-wafa' system, the price is divided into 2 (two): the cost or acquisition price and the selling price plus profit margin. **Fourth**, in terms of profit margins, wherein the murabahah akad with the ba'i al-wafa' system, the profit margin is not given before or after the sale and purchase transaction has been done but is carried out during the sale and purchase transaction. **Fifth**, in terms of the promise to repurchase, wherein this akad, the repurchase of goods is not a condition, but a promise. These two contexts are different. In the word "promise" the item has been buyback by the first seller on the second transaction, just a promise to pay off, while the word "condition" the repurchase of goods has not yet occurred and will only be carried out within a certain period.

Suggestion

First, to the Indonesian Ulema Council (MUI), should issue a Fatwa related to the validity of the murabahah akad with the ba'i al-wafa' system which breaks down the Supreme Court Regulation No. 2 of 2008 concerning the Compilation of Sharia Economic Law (KHES), and added a clause in KHES which specifically discusses the murabahah akad with the ba'i al-wafa' system; *Second*, to Bank Indonesia, should issue a rule in the form of a Bank Indonesia Regulation which in that regulation regulates the types of akad that can be used by Islamic banking in carrying out their operational activities, one of which is the murabahah akad with the ba'i al-wafa' system.

References

Book

- Abbas Arfan. 2013. *99 Kaidah Fiqih Muamalah Kulliyah. (Tipologi Dan Penerapannya Dalam Ekonomi Islam Dan Perbankan Islam)*. Malang: UIN-Maliki Press.
- Abdul Azis Dahlan, (ed.). 1996. *Ensiklopedi Hukum Islam*, Jilid 5. Jakarta: Ichtiar Barn van Hoeve.
- Abu Bakar Muhamad. 1989. *Terjemah Subulus Salam*. Surabaya: Al-Ikhlash.
- Adiwarman Karim. 2001. *Ekonomi Islam: Suatu Kajian Kontemporer*. Jakarta: Gema Insani.
- Ahmad Warson Munawwir. 1997. *Al-Munawwir, Kamus Arab-Indonesia, Cet. IV*. Surabaya: Pustaka Progressif.
- Burhanuddin. 2009. *Hukum Kontrak Syariah*. Yogyakarta: BPFE.
- Departemen Agama RI. 2002. *Al-Qur'an dan Terjemahannya*. Jakarta Timur: Darus Sunnah.
- Dyah Ochtorina Susanti dan A'an Efendi. 2014. *Penelitian Hukum (Legal Research)*. Jakarta: Sinar Grafika.
- Dyah Ochtorina Susanti. 2006. *Pelaksanaan Perjanjian Pembiayaan Murabahah Dengan Sistem Bai'u Salam Ditinjau Dari Sudut Pandang Hukum Islam (Studi pada PT. BPRS Daya Artha Mentari Bangil – Pasuruan)*, Tesis. Malang: Program Pascasarjana Fakultas Hukum Universitas Brawijaya.
- Lukman Hakim. 2012. *Prinsip-Prinsip Ekonomi Islam*. Jakarta: Penerbit Erlangga.
- M. Ali Hasan. 2003. *Berbagai Macam Transaksi dalam Islam (Fiqh Muamalat)*. Jakarta: RajaGrafindo Persada.
- Malayu SP Hasibuan. 2001. *Dasar-Dasar Perbankan*. Jakarta: Citra Aditya Bakti.
- Muhamad. 2003. *Sistem & Prosedur Operasional Bank Syariah*. Yogyakarta: UII Press.
- Muhammad Syafi'i Antonio. 2001. *Bank Syariah dari Teori ke Praktik*. Jakarta : Gema Insani Press.
- Salim Bahreisy dan Abdullah Bahreisy. 1992. *Tarjamah Bulughul Maram Min Adillatil Ahkam*. Surabaya: Balai Buku.
- Salim Hs. 1999. *Mengenal Hukum Suatu Pengantar*. Yogyakarta: Liberty.
- Soejono dan Abdurrahman. 2003. *Metode Penelitian Hukum*. Jakarta: Rineka Cipta.
- Subekti. 2001. *Hukum Perjanjian, Cetakan ke-17*. Jakarta: Intermasa.
- Sulaiman Rasjid. 2001. *Fiqh Islam*. Bandung : Sinar Baru Algensindo.
- Tim Penyusun Otoritas Jasa Keuangan. 2020. *Perbankan Syariah, Periode September 2020*. Jakarta: Otoritas Jasa Keuangan.
- Wiroso. 2005. *Jual Beli Murabahah*. Yogyakarta : UII Press.

Journal

Afdawaiza, *Terbentuknya Akad dalam Hukum Perjanjian Islam*, Al-Mawarid Edisi XVIII Tahun 2008.

Asa'ari. *BAI'UL WAFA` (Review Penggunaan Dalil Mashlahah di Kalangan Hanafiyah)*. Jurnal Islamika, Vol.13 No. 1 Tahun 2013.

Dewi Wulan Fasya. *Jual Beli dengan Hak Membeli Kembali (Studi Komparasi Antara Kitab Undang-Undang Hukum Perdata dan Fikih Syafi'i)*. Jurisdictie: Jurnal Hukum dan Syariah Vol. 6 No. 1, 2015.

Naghfir. *Efektivitas Akad Pembiayaan Bai' Al- Wafa'*. Arena Hukum, Vol. 10, No. 1, April 2017.

Nanin Koeswidi Astuti. *Analisa Yuridis Tentang Perjanjian Dinyatakan Batal Demi Hukum*. Jurnal Hukum to-ra, Vol. 2 No. 1, April 2016.

Nurma Khusna Khanifa. *Jaminan Akad Murabahah di Lembaga Keuangan Syariah Kajian Hukum Perdata*, Jurnal *Az Zarqa'*, Vol. 7, No. 2, December 2015.

Sri Sudarti. *Ba'i Al-Wafa': Permasalahan Dan Solusi Dalam Implementasinya*. Analytica Islamica, Vol. 5, No. 1, 2016.

Regulation

Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking.

Law Number 21 of 2008 concerning Sharia Banking.

Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law.

Fatwa of the National Syari'ah Council Number 04/DSN-MUI/IV /2000 on Murabahah.

Internet

<https://finansial.bisnis.com/read/20190915/90/1148536/akad-murabahah-dominasi-pembiayaan-bank-syariah>

<https://kbbi.web.id/tamyiz>