



THE RIGHT TO BUYBACK IN *MURĀBAHAH* AKAD  
WITH THE *BAY' AL-WAFĀ'* SYSTEM  
BASED ON *MAQĀŞID SHARĪA*

*Dyah Ochterina Susanti\**

Faculty of Law, Jember University, Indonesia  
Email: dyahochtorina.fh@unej.ac.id

*Rahmadi Indra Tektona*

Faculty of Law, Jember University, Indonesia  
Email: rahmadiindra@unej.ac.id

*Siti Nur Shoimah*

Faculty of Sharia, UIN KH Achmad Siddiq Jember, Indonesia  
Email: shoimah13@uinkhas.ac.id

\*Corresponding author

---

DOI: 10.21154/justicia.v19i2.3873

Received: June 8, 2022

Revised: Sept 25, 2022

Approved: Nov 30, 2022

---

**Abstract:** The objective of this article is to find out whether the right to buyback under a *murābahah* akad with the *bay' al-wafā'* system is contrary to *maqāşid al-sharīa* or not. *Murābahah* akad with the *bay' al-wafā'* system is a new type of contract resulting from modification. Applying akad optimally must contain benefits for the community by referring to the *maqāşid al-sharīa*. This study uses a normative legal research method with a statute legal approach and a conceptual approach. This study resulted in the findings that the right to buyback in a *murābahah* akad with the *bay' al-wafā'* system does not contrary to *maqāşid* sharia because it provides benefits, profits, pleasure, benefit, and happiness for the parties (seller and buyer). *Murābahah* akad with the *bay' al-wafā'* system also has fulfilled 5 (five) main elements of realizing benefit, i.e., maintaining religion because it can keep humans from *riba*; nourish the soul, because sellers who get funds quickly and buyers who make a profit can use them to sustain their lives; maintaining the reason because the seller uses his mind to sell his products to the buyer to get funds to meet his needs, and the buyer uses his mind in seeking lawful sustenance (earning a profit) through the use of this *akad*; maintaining offspring, because will provide blessings and benefits for children, grandchildren, and their offspring; maintaining the property, because someone who has more assets (buyer) can use his wealth to help other people who need funds.

Artikel ini bertujuan untuk mengetahui apakah hak membeli kembali berdasarkan akad *murābahah* dengan sistem *bay' al-wafā'* bertentangan dengan *maqāşid al-syarīa* atau tidak.

Akad *murābahah* dengan sistem *bay' al-wafā'* merupakan akad jenis baru hasil modifikasi. Agar akad ini dapat dimanfaatkan secara optimal harus mengandung manfaat bagi masyarakat, yaitu dengan mengacu pada *maqāṣid al-syaria*. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan dan pendekatan konseptual. Hasil temuan dari penelitian ini yaitu bahwa hak pembelian kembali dalam akad *murābahah* dengan sistem *bay' al-wafā'* tidak bertentangan dengan *maqāṣid* syariah, karena memberikan manfaat, keuntungan, kesenangan, manfaat, dan kebahagiaan bagi para pihak (penjual dan pembeli). Akad *murābahah* dengan sistem *bay' al-wafā'* juga telah memenuhi 5 (lima) unsur pokok mewujudkan kemaslahatan, yaitu: memelihara agama, karena dapat menjauhkan manusia dari riba; memelihara jiwa, karena penjual yang mendapatkan dana dengan cepat dan pembeli yang mendapat untung dapat menggunakannya untuk menopang kehidupan mereka; memelihara akal, karena penjual menggunakan akalnya untuk menjual barangnya kepada pembeli untuk mendapatkan dana guna memenuhi kebutuhannya, dan pembeli menggunakan akalnya dalam mencari rezeki yang halal (mendapatkan keuntungan) melalui penggunaan akad ini; memelihara keturunan, karena akan memberikan berkah dan manfaat bagi anak, cucu, dan keturunannya; memelihara harta, karena seseorang yang memiliki harta lebih (pembeli) dapat menggunakan kekayaannya untuk membantu orang lain yang membutuhkan dana.

**Keywords:** Right Bayback, Akad *Murābahah*, Sistem *Bay' al-Wafā'*, *Maqāṣid sharia*

## INTRODUCTION

This article is motivated by the modification of the *Akad murābahah* with the *bay' al-wafā'* system, which is a combination of 2 (two) *akad*, the *murābahah*, and *bay' al-wafā'*. The merging of the two *akad* was carried out to avoid abuse of repurchase rights, as in the case of the Supreme Court of the Republic of Indonesia, Decision Number 3191 K/Pdt/2016. In that case, Plaintiff and Defendant made a Sale and Purchased Agreement in which one of the clauses stated that Plaintiff, as the Seller, was given the right to buy back the land and buildings within 6 (six) months from the signing of the deed and ended on June 22, 2014. At the end of the agreement, Plaintiff has not been able to buy back the land he sold to Defendant, and Defendant asks Plaintiff to vacate the disputed object voluntarily. Plaintiff then filed an objection to the Sukoharjo District Court.<sup>1</sup>

Based on the case above, the author then provides a solution, providing a new concept in the form of repurchase rights, which in Islam is known as *bay' al-wafā'*. But, there are problems with the right to buyback in the *bay' al-wafā'* system, the requirement to buy back the products sold by the first seller, where the purchase is

<sup>1</sup> Wardah, "Penyalahgunaan Keadaan Dalam Perjanjian Jual Beli Dengan Hak Membeli Kembali (Analisis Putusan Mahkamah Agung Nomor 3191 K/Pdt/2016)," *Jurnal Literasi Hukum* 2, no. 2 (2018): 42-53, <https://doi.org/http://dx.doi.org/10.31002/lh.v2i2>.

carried out when the agreed period has arrived. However, according to Islamic law, buying and selling on conditions is not allowed. This is as the hadith of the Prophet Muhammad SAW delivered by Amer bin Suaib from his father from his grandfather, the Prophet Muhammad SAW said that where one of them explained that two conditions are not permitted in buying and selling.

Ibn Tamiyah even views that buying and selling with the *bay' al-wafā'* system is not valid because this sale and purchase look like a trust sale and purchase, the implementation of which is when the money is returned, the goods are returned, and this is a sale and purchase. Vanity either with the conditions stated at the time of the *Akad* or through an agreement before the *Akad*.<sup>2</sup> Another opinion was also expressed by Syafi'iyah Ulama, who said that *bay' al-wafā'* is *fasid*<sup>3</sup> because there is a condition that the seller says that the seller will buy back the goods he has sold if the repurchase money is there and paid.<sup>4</sup> The next problem is the concept of *bay' al-wafā'*, as explained that the akad does not contain a profit (margin) because the first purchase price is the same as the second purchase price. In the reality of economic activity, as it is today, no economic activity is aimed at making a profit. So that the *bay' al-wafā'* system can be applied using a profit margin, the author modifies it with a *murābahah* akad. In this regard, it is necessary to understand that although Islam also provides space for human beings to carry out any akad, as the fiqh rules say: "You Know Your World's Affairs Better" HR. Muslim<sup>5</sup>

The *Akad* must follow the objectives of Islamic law by referring to the main elements of realizing the benefit known as *Maqāṣid al-sharīa*. This is necessary considering that the *murābahah* akad with the *bay' al-wafā'* system is a new concept or modification of the *Akad*, which of course, requires further analysis and study so that it can be applied optimally and following sharia values that are beneficial to society both now and in the future.

Based on the explanation above, the author is interested in discussing the topic with the title "The Right to Buyback in *Murābahah* Akad with the *Bay' al-wafā'* System Based on *Maqāṣid al-sharīa*." The formulation of the problem that becomes a legal

<sup>2</sup> Nanang Qosim, "Transaksi Jual Beli Dalam Bentuk Khusus (Jual Beli Pesanan, Bay' Al-Wafa' Dan Ihtikar," *Asy-Syari'ah* Vol. 4, no. No. 2 (2018): 75-92, <https://doi.org/https://doi.org/10.55210/assyariah.v4i2.108>.

<sup>3</sup> Dimyauddin Djuwaini, *Pengantar Fiqh Muamalah* (Yogyakarta: Pustaka Pelajar, 2008). *akad fasid* is a contract that is originally prescribed, but there are problems with the nature of the *akad*.

<sup>4</sup> Ubaidillah Nawawi, "Tinjauan Istihsan Terhadap Bai' Al-Wafa' Dan Implikasi Konsistensi Bermadzhab Di Baitul Maal Wa Tamwil Sidogiri Cabang Bondowoso," *Istidlal: Jurnal Ekonomi Dan Hukum Islam* 1, no. 2 (2017): 112-40, <https://doi.org/https://doi.org/10.35316/istidlal.v1i2.103>.

<sup>5</sup> Ahmad Zaeni, "Konsep Sunnah Menurut Sa'Duddin Al-Usmani Akar Sejarah Dan Dinamiknya," *Risalah, Jurnal Pendidikan Dan Studi Islam* 6, no. 1 (2019): 105-24, [https://doi.org/10.31943/jurnal\\_risalah.v6i1.112](https://doi.org/10.31943/jurnal_risalah.v6i1.112).



issue in the writing of this scientific paper is whether the right to buyback in *akad murābahah* with the *bay' al-wafā'* system does not conflict with *maqāsid al-sharīa*.

The formulation of the problem above will be discussed and solved using normative legal research methods or doctrinal legal research (doctrinal research), namely library-based research that aims to provide a systematic exposition of the rule of law governing specific legal fields, analyze the rule of law, and even predict the development of the rule.<sup>6</sup> Based on this understanding, the implementation of this method uses to analyze and examine the rules or norms relating to the right to buyback in *akad murābahah* with the *bay' al-wafā'* system. Concerning the approach used, there are 2 (two) namely: 1) statute legal approach, which a used to examine the laws and regulations related to the legal content presented, in this case, the rules or positive law in Indonesia that regulates buying and selling with repurchase rights, *akad murābahah*, and *bay' al-wafā'*. 2) Conceptual approach is the approach used to find the views of legal scholars and doctrines that develop in the science of law, which in this case a used to describe the definition and mechanism of buying and selling with the right to buyback, *murābahah*, *bay' al-wafā'*, and *maqāsid al-sharī'ah*.

## THE RIGHT TO BUYBACK IN *MURĀBAḤAH* AKAD WITH THE *BAY' AL-WAFĀ'* SYSTEM

The right to buyback is one of the types of buying and selling regulated in Burgerlijk Wetboek (from now on, abbreviated as BW). Buy and sell with the right to buyback is a lending and borrowing transaction of money in the form of buying and selling on the condition that the seller must repurchase the goods if he already has the money.<sup>7</sup> According to BW, the right to repurchase is the power to buy back goods sold as a promise. The seller is given the right to take back the goods he sells at the initial purchase price accompanied by a replacement in Article 1532 BW.<sup>8</sup> The replacement is in the form of purchase and delivery costs and repair or maintenance of goods.<sup>9</sup>

<sup>6</sup> Dyah Ochtorina Susanti dan A'an Efendi, *Penelitian Hukum (Legal Research)* (Jakarta: Sinar Grafika, 2018).

<sup>7</sup> Dewi Wulan Fasya, "Jual Beli Dengan Hak Membeli Kembali (Studi Komparasi Antara Kitab Undang-Undang Hukum Perdata Dan Fikih Syafi'i)," *Jurisdictie* 6, no. 1 (2017): 50-62, <https://doi.org/10.18860/j.v6i1.4089>.

<sup>8</sup> See Article 1519 Burgerlijk Wetboek, which contains:

"The power to buy back goods that have been sold is issued from a promise, where the seller is given the right to take back the goods he sells, by returning the original purchase price, accompanied by the replacement as stated in article 1532".

<sup>9</sup> See Article 1532 Burgerlijk Wetboek, which contains:

Another definition of sale and purchase with the right to repurchase is a debt or loan agreement with collateral. This means that buying and selling with the right to repurchase is the same as accounts payable with collateral, namely the provision of loans with guarantees, and the payment exceeds the cost of the first payment.<sup>10</sup> Based on the understanding of buying and selling with the right to buyback, it can be understood that the sale and purchase agreement with the right of buying back in BW is a form of quasi-buying and selling because, in this case, what happens is debt. Someone who needs funds agrees with the debtor and the creditor in the form of a sale and purchase agreement with the right to buyback, but the house sold remains in the debtor's control (seller).<sup>11</sup>

Unlike the BW explanation, the right to repurchase according to Islamic economic law is known as *bay' al-wafā'*. Linguistically, *bay'* means buying and selling, and *al-wafa'* means keeping promises, being loyal, and not breaking promises.<sup>12</sup> At the terminology level, *bay' al-wafa'* is a conditional sale and purchase in which the goods sold can be a buyback if the grace period arrives.<sup>13</sup> According to Ibn Abidin in Ubaidillah, *bai' al-wafa'* is *Akad* (contract) in which a person who needs money sells goods to someone who has cash. The goods sold cannot be moved with an agreement that when the seller can return the price of the goods, the seller can ask for the goods back.<sup>14</sup> In positive Indonesian law, regulated in Article 112 paragraph (1) of the Supreme Court Regulation No. 2 of 2008 on Sharia Economy Law Compilation, *ba'i al-wafa'* is explained as buying and selling subject to the right of redemption, in which the seller can return the money for the price of the goods sold and demand that the goods be returned. This provision is in line with Nasrun Haroen's opinion in Bahori Ahoen that *bay' al-wafā'* is a sale and purchase carried

---

"The seller who uses the promise to buy back is not only required to return the entire original purchase price but is also required to reimburse all costs according to the law that has been incurred to carry out the purchase and delivery, as well as costs necessary for repairs, and costs that caused the goods to be damaged sold for an increase in price, this additional amount."

<sup>10</sup> Fasya, "Jual Beli Dengan Hak Membeli Kembali (Studi Komparasi Antara Kitab Undang-Undang Hukum Perdata Dan Fikih Syafi'i)."

<sup>11</sup> Retno Wahyurini Dominika dan Endang Sri Kawuryan, "Perjanjian Beli Kembali (Buy Back Guarantee) Antara Pengembang Dan Bank Dalam Penyelesaian Masalah Kredit Macet," *Transparansi Hukum* 1, no. 1 (2018): 55-78, <https://doi.org/10.30737/transparansi.v1i1.171>.

<sup>12</sup> Asa'ari, "BAI'UL WAFĀ' (Review Penggunaan Dalil Mashlahah Di Kalangan Hanafiyah)," *Jurnal Islamika: Jurnal Ilmu-Ilmu Keislaman* 13, no. 1 (2013): 77-90, <https://doi.org/https://doi.org/10.32939/islamika.v13i1.20>.

<sup>13</sup> Rahmi dan Noprizal Pratiwi, "Formulasi Hybrid Contract Sebagai Alternatif Pembiayaan Pertanian Di Bank Syariah," *Al Falah: Journal of Islamic Economics* 2, no. 2 (2017): 139-66, <https://doi.org/http://dx.doi.org/10.29240/jie.v2i2>.

<sup>14</sup> Nawawi, "Tinjauan Istihsan Terhadap Bai' Al-Wafa' Dan Implikasi Konsistensi Bermadzhab Di Baitul Maal Wa Tamwil Sidogiri Cabang Bondowoso."

out between two parties, accompanied by the condition that the goods sold can be buyback by the seller if the specified grace period has arrived.<sup>15</sup>

Sayyid Sabiq also put forward another definition in Dewi Wulan Fasya that *bay' al-wafa'* occurs when a person in need sells an item with a promise. The promise states that the goods are returned if the payment has been fulfilled (paid back). At the fiqh level, *bay' al-wafā'* is commonly used to refer to a sale and *akad jual beli* (contract) in which the seller or owner of the goods, when making a transaction, agrees with the buyer that the goods being the object of sale. Purchase is maintained (as a guarantee) until the goods are repurchased by the first seller within a specified period at the same price as the first purchase price.<sup>16</sup> Some of the definitions above indicate that buying and selling with the right to repurchase in the *bay' al-wafā'* system is a sale and purchase containing the terms of repurchasing goods within a time agreed upon by the parties, for example, one year, so that when one year has expired, then the seller can buy back the goods that have been sold to the buyer, at the same price according to the first purchase price.<sup>17</sup>

According to the agreement, there is no time limit on the repurchase of goods in the *bay' al-wafā'* system. For example, one year, two years, and three years.<sup>18</sup> Concerning the price of goods, according to the concept of *bay' al-wafā'*, the selling price in the first transaction is the same as the selling price in the second transaction.<sup>19</sup> For example, suppose the selling price (initial) in the first transaction is agreed at IDR 1,000,000 (one million rupiahs). In that case, the selling price or repurchase in the second transaction is IDR 1,000,000 (one million rupiahs). Related to this, no business or transaction is carried out without profit. This is evidenced by the practice of *bay' al-wafā'*, in which there is profit.

In Indonesia, the *bay' al-wafā'* system has been used in the community like a *Baitul Mal wat Tamwil* (BMT), one of which was by BMT UGT Sidogiri at the

---

<sup>15</sup> Bahori Ahoen, "Analisis Implementasi Alternatif Model Jual Beli Pada Produk Jual Beli Tanah Dengan Hak Membeli Kembali Pada Pt Akuisindo Assetama Jakarta Ditinjau Dari Hukum Positif Dan Syariah," *Malia* (Terakreditasi) 11, no. 2 (2020): 207-20, <https://doi.org/10.35891/ml.v11i2.1775>.

<sup>16</sup> Fasya, "Jual Beli Dengan Hak Membeli Kembali (Studi Komparasi Antara Kitab Undang-Undang Hukum Perdata Dan Fikih Syafi'i)."

<sup>17</sup> Sri Sudarti, "Bay' al-wafā': Permasalahan Dan Solusi Dalam Implementasinya," *Analytica Islamica* 5, no. 1 (2016): 169-201.

<sup>18</sup> This is different from western law, in the BW it is stated that the period to redeem goods that have been sold is five years, as regulated in Article 1520 of *Burgelijk Wetboek*, which contains:  
"The right to repurchase cannot be agreed for more than five years. If the right is agreed more than that time, then the time is shortened to five years."

<sup>19</sup> Article 112 paragraph (1) Supreme Court Regulation No. 2 of 2008 concerning Sharia Economy Law Compilation.



Wonokerto Branch. The customer sold his motorcycle to BMT with an agreed price of 50% of the market price, 3,000,000 (Three Million Rupiah). The parties also agree that within 1 ( ) year, the motorcycle can be buyback at the first purchase price plus a margin of 2.3%. BMT then leases the motorcycle to the customer (the seller) with payments in installments for 1 (one) year. After the installment is paid off, the customer can repurchase his motorbike at a price according to the agreement at the beginning of the *akad*.<sup>20</sup>

Based on the example of the *bay' al-wafā'* akad above, there is a problem that the akad is not following sharia values because it still contains conditions. The customer must repurchase the goods he sells at the agreed time. Another problem is the mention of the *bay' al-wafā'* akad in the example is also inaccurate because there is a profit margin. Even though there is no profit in the *bay' al-wafā'*, there is no profit (margin). Related to this, to overcome these problems, the modification of the *murābahah*<sup>21</sup> akad<sup>22</sup> with the *bay' al-wafā'* system is here to provide a new concept to prevent people from actions that are not following sharia values.

The mechanism of the *murābahah* akad with the *bay' al-wafā'* system is the same as *akad bay' al-wafā'*. There is a right to buyback, but the difference lies in the promise to buyback and profit (margin). In practice, the parties negotiate the agreement on the description of the goods (object or description of the goods) and the price. The results are agreed upon in a *murābahah* akad with the *bay' al-wafā'* system in which there is *akad murābahah*. There are 2 (two) transactions, first transaction (ordinary sale and purchase), the seller sells the goods to the buyer at a price according to the agreement and purchases in cash. In the second transaction, the buyer agrees to sell the goods to the original seller at the selling price plus profit (margin) and the time of repurchase according to a mutual agreement with cash payments in installments. In the process of this second sale and purchase transaction, the seller gives an advance (*arbun*) to the buyer as a "sign of completion"

<sup>20</sup> Kudus Kudus and Naghfir Naghfir, "Efektivitas Akad Pembiayaan Bai' Al- Wafa Pada Baitul Maal Wat Tamwil," *Arena Hukum* 10, no. 1 (2017): 1-19, <https://doi.org/10.21776/ub.arenahukum.2017.01001.1>.

<sup>21</sup> Youdhi Prayogo, "Konsep , Prosedur , Penetapan Margin," *Jurnal Kajian Ekonomi Islam Dan Kemasyarakatan* 4, no. 2 (2011): 114-31, <https://doi.org/https://doi.org/10.30631/al-risalah.v14i01.402>. Concerning to the definition of *murābahah* akad comes from the word "ribhu", which means profit in this case, it an intended as the profit mentioned in the sale and purchase.

<sup>22</sup> Tri Setiady, "Pembiayaan Murābahah Dalam Perspektif Fiqh Islam, Hukum Positif Dan Hukum Syariah," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 8, no. 3 (2015): 517-30, <https://doi.org/10.25041/fiatjustisia.v8no3.311>.

for the repurchase of the goods by the original seller so that the repurchase promise has been fulfilled and all that remains is to pay it off.<sup>23</sup>

The existence of *arbun* provides an opportunity for the seller to pay off the goods he bought back within the specified period to avoid abuse of the right to repurchase. This is also one of the characteristics of the right to buy back in the *murābahah* akad with the *bay' al-wafā'* system. The repurchase of goods is not a condition but a promise to pay off the price of the goods. According to the author, these two contexts are different because the word "promise" indicates that the seller has buyback the goods in the second transaction so that it remains to be paid off. In the word condition, the repurchase of goods has not yet occurred and has been carried out within the agreed period. The right to buyback in *akad murābahah* with the *bay' al-wafā'* system also contains an element of profit (margin) because it contains *Akad murābahah*, thus keeping people away from activities that contain elements of *riba*.

The public does not need to worry about using the right to buyback in a *murābahah* akad with the *bay' al-wafā'* system because there are no requirements, and the community can also take advantage (margin). However, the right to buyback in *akad murābahah* with the *bay' al-wafā'* system is a new concept or modification of the akad, and it is necessary to pay attention to the benefits and advantages for the community so that later it can be applied optimally, using the *Maqāshid al-sharia*. *Maqāshid al-sharia* consists of two words, *maqāshid* and *sharia*.

The word *maqāshid* is the plural form of *maqshad* which means purpose. The shari'ah is an Arabic vocabulary that means the road to a water source. It is interpreted as a source of springs because water is a source of life for humans, animals, and plants to sharia (Islam) becomes a source of life for humans. Based on this understanding, then *maqāshid al-sharia* has the meaning, namely the goals set by the *sharia* to benefit humans or the goals to be achieved from a legal determination.<sup>24</sup>

In connection with the explanation above, *maqāshid al-shari`ah* is a way of determining a provision with no rules. It becomes the primary reference and support for the benefit of the people, especially in muamalah activities. In *akad murābahah* with the *bay' al-wafā'* system, it must contain 5 (five) main elements of the objectives of Islamic law, namely maintaining religion (*Hifz al-Din*), maintaining the soul (*Hifz*

---

<sup>23</sup> The advance (*arbun*) can be taken or deducted from the acquisition price in the first transaction so that the seller receives money at the cost of acquisition after deducting the advance.

<sup>24</sup> Sandy Rizki Febriadi, "Aplikasi Maqashid Syariah Dalam Bidang Perbankan Syariah," *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah* 1, no. 2 (2017): 231–45, <https://doi.org/10.29313/amwaluna.v1i2.2585>.



*al-Nafs*), maintaining reason (*Hifz al-Aql*), maintaining offspring (*Hifz an-Nasl*), and maintaining property (*Hifz al-Mal*).

**The first element is Maintaining Religion.** Religion is human nature and a need as a guide for human life. In Islam, there are components of *aqidah* as a guide to the life of Muslims and morality as an attitude of life for Muslims, so they need to be maintained and guarded, such as establishing prayers, issuing zakat, fasting, and performing the pilgrimage.<sup>25</sup> Based on its importance, religious maintenance can be divided into three levels:<sup>26</sup>

- a. Maintaining Religion at the *darūriyāt* level maintains something required by religion to do, such as performing the five daily prayers. When prayer is left, the existence of religion will be threatened.
- b. Maintaining Religion at the *hājīyāt* level, it carries out religious provisions aiming to avoid difficulties. When this provision does not do it, it will not threaten the existence of religion but will only make it difficult for those who do it.
- c. Maintaining Religion at the *taḥsīniyāt* level, it follows religious instructions upholding human dignity while fulfilling obligations to God. For example, covering the *aurat*, inside and outside the prayer, and cleaning the body, clothes, and places. When this is impossible to apply, it will not threaten the existence of religion and also not make it difficult for people who do it. That is, if there is no covering of *aurat*, a person may pray not to leave the prayer that belongs to the *darūriyāt*.

Referring to this explanation, if it is related to the right to buyback in *akad murābahah* with the *bay' al-wafā'* system, this *akad* can keep people from usury prohibited by religion. This is as the translation of Q.S. Al-Baqarah Verse 275:

“Those who consume interest cannot stand (on the Day of Resurrection) except as one who Satan is beating into insanity. They say, “trade is (just) like interest.” But Allah has permitted trade and has forbidden interest. So, whoever has received a warning 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 champions of the Fire, they will abide eternally therein.”

<sup>25</sup> Muhammad Rusdi Ali, “Maslahat Sebagai Metode Ijtihad Dan Tujuan Utama Hukum Islam,” *Jurnal Syari'ah Dan Hukum Diktum* 15, no. 2 (2019): 151–68, <https://doi.org/https://doi.org/10.28988/diktum.v15i2.432>.

<sup>26</sup> Dyah Ochtorina Susanti, *Hukum Islam: Sejarah Dan Perkembangannya Di Indonesia* (Pustaka Amma Amalia, 2018).

In connection with the notion of usury is an increase in income illegally (*bathil*). The word usury or  *ziyadah*  grows, adds, or excess. The definition of added in this case is defined as additional money on capital obtained in a way that is not justified by *syara'*, whether it is added in small or large amounts.<sup>27</sup> In English, usury or *riba'* means "lending money at an exorbitant or illegal interest rate."

The fiqh ulama also argues that usury is an excess of wealth in a muamalah with no reward/replacement. This means that it is an addition to the money capital that arises due to a debt transaction that must be given by the creditor to the debtor when the debt is due.<sup>28</sup> Regarding the classification of usury, it is divided into 3 types, (1) *Riba' fadhl* is an advantage over one of the similar assets that are traded by *syara'*. For example, one kilogram of rice is sold for two kilograms of rice. The excess of one kilogram is called *riba' fadhl*.<sup>29</sup> (2) *Riba' Jahiliyah* is an increase in the amount of debt for borrowers who cannot pay at maturity date that is paid more than the principal because the borrower cannot pay his debts on time.<sup>30</sup> Creditors then use the inability to pay this debt to take advantage. (3) *Riba Nasiah* is an advantage over the existence of receivables given to people who are indebted to owners of capital (money) when the agreed time is over. If, until the maturity date, the excess is not paid for by the debtor, the time can be extended on the condition that there is an addition to the amount owed.<sup>31</sup>

Likewise, the buyer's benefits will enable the buyer to pay zakat and even perform the pilgrimage. Likewise, sellers who need money, for example, to meet basic needs, school fees, etc., are no longer worried and can even buy back the goods at the agreed time. This will increase the seller's gratitude, faith, and devotion to Allah SWT. In this regard, if the proceeds from the sale of goods are used to develop a business, when Allah SWT is given sustenance, the seller can give alms or pay zakat.

**The second element, Maintaining the Soul.** Islamic law exists to maintain human rights, namely the right to live and keep safe one's life. In this regard, to

---

<sup>27</sup> Fetria Eka Yudiana, "Dimensi Waktu Dalam Analisis Time Value of Money Dan Economic Value of Time," *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 4, no. 1 (2013): 131-43, <https://doi.org/10.18326/muqtasid.v4i1.131-143>.

<sup>28</sup> Yudiana.

<sup>29</sup> Muhamad, *Lembaga Perekonomian Islam* (Yogyakarta: UPP STIM YKPN, 2017).

<sup>30</sup> Muhamad.

<sup>31</sup> I Ipandang and A Askar, "Konsep Riba Dalam Fiqih Dan Al-Qur'an: Studi Komparasi," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 19, no. 2 (2020): 1080-90, <https://www.jurnal.iain-bone.ac.id/index.php/ekspose/article/view/1143>.

maintain the safety of the human soul, Allah SWT forbids committing suicide or murder and protects various means used by humans for the benefit of their lives.<sup>32</sup> Based on the level of importance, maintaining the soul can be divided into three levels:<sup>33</sup>

- a. Maintaining the soul at the *darūrīyāt* level, such as meeting basic needs in the form of food to sustain life. When these basic needs are ignored, it threatens the existence of the human soul.
- b. They are maintaining the soul at the *ḥājīyāt* level, such as being allowed to hunt animals to enjoy delicious and halal food. When not done, it will not threaten human existence but only complicate their lives.
- c. We are maintaining the soul at the *taḥsīnīyāt* level, such as determining how to eat and drink. This activity is only related to politeness and ethics and will no longer threaten the existence of the human soul or complicate someone's life.

Referring to this explanation, the right to buyback in *akad murābahah* with the *bay' al-wafā'* system benefits the buyer, that is, being able to obtain funds easily and quickly to meet their needs, especially needs in terms of food, clothes, or housing. Likewise, with sellers, the profits can also be used to meet their daily needs, and they can continue living without worrying about starvation. Based on this explanation, the soul, the right to life of humans, especially the parties (sellers and buyers), will continue to be maintained and preserved. The maintenance of the soul in this *akad* is included in the *darūrīyāt* level because this *akad* can help a person fulfilling his life needs fundamental needs. Through this *Akad*, a person who needs money urgently can sell his goods without losing the goods because, within the agreed period, the goods can be repurchased by the seller.

**The third element, Maintaining Reason.** The maintenance of reason is essential because, using the mind, humans can think about Allah SWT, the universe, and themselves and develop science and technology. The use of reason must be directed at something beneficial to the interests of human life by prohibiting intoxicating drinking drinks (*khamr*) and imposing penalties on people who commit acts that can damage human reason.<sup>34</sup> In terms of its importance, the maintenance of reason is divided into three levels, they are:<sup>35</sup>

---

<sup>32</sup> Rusdi Ali, "Maslahat Sebagai Metode Ijtihad Dan Tujuan Utama Hukum Islam."

<sup>33</sup> Susanti, Hukum Islam: Sejarah Dan Perkembangannya Di Indonesia.

<sup>34</sup> Dyah Ochtorina Susanti, "Perjanjian Kawin Sebagai Bentuk Perlindungan Hukum Bagi Pasangan Suami Istri (Perspektif Maqashid Syari'ah)," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 1, no. 2 (2018): 1-30, <https://doi.org/10.30659/jua.v1i2.2456>.

<sup>35</sup> Susanti, Hukum Islam: Sejarah Dan Perkembangannya Di Indonesia.



- a. It was maintaining reason at the *darūrīyāt* level, such as forbidding to consume of liquor. When this provision is not done, it will result in the threat of the existence of reason.
- b. It is maintaining reason at the *Hājīyāt* level, such as the command to seek knowledge. If it is not done, it will not damage the mind but will make it difficult for a person concerning knowledge development.
- c. It was maintaining reason at the *taḥsīnīyāt* level, such as avoiding imagining or listening to something that is not useful. This is closely related to ethics and will not threaten the existence of reason directly.

Referring to this explanation, the use of the right to buyback in *akad murābaḥah* with the *bay' al-wafā'* system is the implementation of the maintenance of human reason.<sup>36</sup> This is exemplified by sellers who use their consideration to sell their goods to buyers to get funds to meet their needs, not in illegal ways such as stealing, robbing, and other things that cause harm (damage) or destroy one's mind with actions that are prohibited by religion. Likewise, buyers who use and utilize their minds to seek lawful (halal) sustenance (profit) through *akad murābaḥah* with this *bay' al-wafā'* system. Based on this explanation, it can be understood that the human mind will be maintained and preserved by using the right to buyback in *akad murābaḥah* with the *bay' al-wafā'* system. The maintenance of reason in this *akad* is included at the *taḥsīnīyāt* level because it does not affect reason directly but is related to one's ethics or actions.

**The fourth element, Maintaining Offspring.** Everyone should stay away from actions that are prohibited by Islamic law, especially those that will have an impact on offspring.<sup>37</sup> Based on the level of need, maintaining offspring can be divided into three levels:<sup>38</sup>

- a. It is maintaining offspring at the *darūrīyāt* level, such as marriage and the prohibition of adultery. When this is not done, the existence of the offspring will be threatened.
- b. He was maintaining offspring at the *hājīyāt* level, the provision that the husband must mention the dowry at the time of *ijab* and *qabul*. When the husband does not say the dowry, it will result in difficulties because the husband has to pay the dowry of *mitsil*.

---

<sup>36</sup> Susanti, "Perjanjan Kawin Sebagai Bentuk Perlindungan Hukum Bagi Pasangan Suami Istri (Perspektif Maqashid Syari'ah)."

<sup>37</sup> Susanti.

<sup>38</sup> Susanti, *Hukum Islam: Sejarah Dan Perkembangannya Di Indonesia*.

- c. It is maintaining offspring at the *taḥsīnīyāt* level, as in the sharia walimah in marriage. When this is not done, it will not threaten the existence of the offspring, nor will it make it difficult for people to marry.

In connection with the above, then in a household, the husband or wife must pay attention to the source of funds earned to support their family. That is, the money earned must be clear of its origin, and the process of obtaining it must be evident, whether the money is lawful or not, because the money earned will impact the lives of children and their offspring. In this regard, in the maintenance of religion in *akad murābahah* with the *bay' al-wafā'* system, as explained earlier, it is clear that this contract does not contain an element of usury and does not contain an element of *gharar* because the contract is a sale and purchase. The funds obtained by the seller and the profits obtained by the buyer to be used to meet the needs of his life and his family, school fees for children, or business capital (including profits from business) are lawful money and provide benefits for children, grandchildren, and their descendants. This shows that the benefit of humans, especially the parties who make *Akad* and their offspring, is maintained. The explanation shows that the benefit of humanity, especially the parties to the *akad* and their offspring, is maintained, and this is included in the maintenance of offspring at the *ḥājīyāt* level because when this *akad* is not carried out correctly, it will not affect the existence of the offsprings. Still, one day can cause difficulties for a person in living his life to his offspring due to the acquisition of sustenance not being blessed.

**The fifth element, Maintaining Property.** In Islamic teachings, the property is a gift from God to humans, so they can maintain life and carry on their life by obtaining property legally and legally and maintaining these assets.<sup>39</sup> Based on its importance, maintaining a property can be divided into three levels, namely:<sup>40</sup>

- a. It is maintaining the property at the *darūrīyāt* level, such as provisions regarding the prohibition of taking other people's property in a way that is not following sharia principles. When these rules are violated, it will result in the threat of the existence of property.
- b. Maintaining property at the *ḥājīyāt* level, such as sharia regarding buying and selling by way of greetings, will make it difficult for people who need capital if it is not done

---

<sup>39</sup> Susanti, "Perjanjan Kawin Sebagai Bentuk Perlindungan Hukum Bagi Pasangan Suami Istri (Perspektif Maqashid Syari'ah)."

<sup>40</sup> Susanti, *Hukum Islam: Sejarah Dan Perkembangannya Di Indonesia*.

- c. It is maintaining the property at the *taḥsīnīyāt* level, such as provisions on avoiding deception or fraud. This is closely related to business ethics and will affect the validity of the sale and purchase because the third level is part of the first and second levels.

Based on this, Islamic law obliges to seek sustenance through various muamalah, exchanges, trade, and business cooperation. Regarding property maintenance, Islam prohibits theft, fraud, betrayal, destroying other people's property, or actions containing *riba*. One way to overcome this as a form of property maintenance is by using the right to buy back in *akad murābahah* with the *bay' al-wafā'* system. Someone with more assets can use the *akad* to help other people in need, namely by buying goods from other parties who need funds, where the goods, within a certain period, according to the parties' agreement, will be buyback by the seller. In this regard, the buyer's property will be blessed and preserved. Likewise, people who need funds (sellers) can sell their goods to those who have more assets, and if, within the agreed time, the seller already has funds, the seller can use his right to buy back the goods he sells. This shows that the seller's property is also helpful and well-maintained. The maintenance of the property in using the *akad murābahah* with the *bay' al-wafā'* system enters the *darurriyat* level.

Based on the explanation above, the right to buyback in *akad murābahah* with the *bay' al-wafā'* system according to *maqāṣid al-sharīa* because it provides benefits, profits, pleasure, advantage, and happiness for the parties (seller and buyer). The buyer helps the seller because he gets money or funds easily and quickly, and the seller can also immediately fulfill his needs, including buyers who also benefit (margin). Based on this, the *murābahah* *akad* with the *bay' al-wafā'* system can be applied for everyone, or state financial institutions, such as Islamic banking, or other institutions, because implementing this *akad* optimally will provide benefits to humans.

## CONCLUSION

Based on the discussion as described above, the author concludes that the right to buyback in a *murābahah* *akad* with the *bay' al-wafā'* system does not contrary to *maqāṣid al-sharīa* because it has fulfilled 5 (five) main elements of realizing benefit, namely: 1) Maintaining religion, because it can keep humans from *riba'* increase gratitude, faith, and devotion to Allah SWT. 2) Maintaining the soul because sellers who get funds quickly and buyers who profit can use them to sustain their lives. 3) Maintaining the reason because the seller uses his mind to sell his goods to the buyer



to get funds to meet his needs, and the buyer uses his mind to seek lawful sustenance (earning a profit) through this Akad. 4) Maintaining offspring because the funds obtained by the seller and the profits obtained by the buyer are lawful money and will provide blessings and benefits for children, grandchildren, and their offspring. 5) Maintaining property because someone who has more assets (buyer) can use his wealth to help other people who need funds, while sellers can use their goods (property) to get funds to meet their needs.

## REFERENCES

- Ahoen, Bahori. "Analisis Implementasi Alternatif Model Jual Beli Pada Produk Jual Beli Tanah Dengan Hak Membeli Kembali Pada Pt Akuisindo Assetama Jakarta Ditinjau Dari Hukum Positif Dan Syariah." *Malia (Terakreditasi)* 11, no. 2 (2020): 207–20. <https://doi.org/10.35891/ml.v11i2.1775>.
- Asa'ari. "BAI'UL WAFA` (Review Penggunaan Dalil Mashlahah Di Kalangan Hanafiyah)." *Jurnal Islamika: Jurnal Ilmu-Ilmu Keislaman* 13, no. 1 (2013): 77–90. <https://doi.org/https://doi.org/10.32939/islamika.v13i1.20>.
- Djuwaini, Dimyauddin. *Pengantar Fiqh Muamalah*. Yogyakarta: Pustaka Pelajar, 2008.
- Efendi, Dyah Ochtorina Susanti dan A'an. *Penelitian Hukum (Legal Research)*. Jakarta: Sinar Grafika, 2018.
- Fasya, Dewi Wulan. "Jual Beli Dengan Hak Membeli Kembali (Studi Komparasi Antara Kitab Undang-Undang Hukum Perdata Dan Fikih Syafi'i)." *Jurisdictie* 6, no. 1 (2017): 50–62. <https://doi.org/10.18860/j.v6i1.4089>.
- Febriadi, Sandy Rizki. "Aplikasi *Maqāṣid* Syariah Dalam Bidang Perbankan Syariah." *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah* 1, no. 2 (2017): 231–45. <https://doi.org/10.29313/amwaluna.v1i2.2585>.
- Ipandang, I, and A Askar. "Konsep Riba Dalam Fiqih Dan Al-Qur'an: Studi Komparasi." *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 19, no. 2 (2020): 1080–90.
- Kawuryan, Retno Wahyurini Dominika dan Endang Sri. "Perjanjian Beli Kembali (Buy Back Guarantee) Antara Pengembang Dan Bank Dalam Penyelesaian Masalah Kredit Macet." *Transparansi Hukum* 1, no. 1 (2018): 55–78. <https://doi.org/10.30737/transparansi.v1i1.171>.
- Kudus, Kudus, and Naghfir Naghfir. "Efektivitas Akad Pembiayaan Bai' Al- Wafa Pada Baitul Maal Wat Tamwil." *Arena Hukum* 10, no. 1 (2017): 1–19. <https://doi.org/10.21776/ub.arenahukum.2017.01001.1>.
- Muhamad. *Lembaga Perekonomian Islam*. Yogyakarta: UPP STIM YKPN, 2017.
- Nawawi, Ubaidillah. "Tinjauan Istihsan Terhadap Bai' Al-Wafa' Dan Implikasi

- Konsistensi Bermadzhab Di Baitul Maal Wa Tamwil Sidogiri Cabang Bondowoso." *Istidlal: Jurnal Ekonomi Dan Hukum Islam* 1, no. 2 (2017): 112-40. <https://doi.org/https://doi.org/10.35316/istidlal.v1i2.103>.
- Pratiwi, Rahmi dan Noprizal. "Formulasi Hybrid Contract Sebagai Alternatif Pembiayaan Pertanian Di Bank Syariah." *Al Falah: Journal of Islamic Economics* 2, no. 2 (2017): 139-66. <https://doi.org/http://dx.doi.org/10.29240/jie.v2i2>.
- Qosim, Nanang. "Transaksi Jual Beli Dalam Bentuk Khusus (Jual Beli Pesanan, Bay' Al-Wafa' Dan Ihtikar." *Asy-Syari'ah* Vol. 4, no. No. 2 (2018): 75-92. <https://doi.org/https://doi.org/10.55210/assyariah.v4i2.108>.
- Rusdi Ali, Muhammad. "Maslahat Sebagai Metode Ijtihad Dan Tujuan Utama Hukum Islam." *Jurnal Syari'ah Dan Hukum Diktum* 15, no. 2 (2019): 151-68. <https://doi.org/https://doi.org/10.28988/diktum.v15i2.432>.
- Setiady, Tri. "Pembiayaan *Murābahah* Dalam Perspektif Fiqh Islam, Hukum Positif Dan Hukum Syariah." *FIAT JUSTISIA: Jurnal Ilmu Hukum* 8, no. 3 (2015): 517-30. <https://doi.org/10.25041/fiatjustisia.v8no3.311>.
- Sudarti, Sri. "*Bay' al-wafā'*: Permasalahan Dan Solusi Dalam Implementasinya." *Analytica Islamica* 5, no. 1 (2016): 169-201.
- Susanti, Dyah Ochtorina. *Hukum Islam: Sejarah Dan Perkembangannya Di Indonesia*. Pustaka Amma Amalia, 2018.
- — —. "Perjanjian Kawin Sebagai Bentuk Perlindungan Hukum Bagi Pasangan Suami Istri (Perspektif *Maqāsid* Syari'ah)." *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 1, no. 2 (2018): 1-30. <https://doi.org/10.30659/jua.v1i2.2456>.
- Wardah. "Penyalahgunaan Keadaan Dalam Perjanjian Jual Beli Dengan Hak Membeli Kembali (Analisis Putusan Mahkamah Agung Nomor 3191 K/Pdt/2016)." *Jurnal Literasi Hukum* 2, no. 2 (2018): 42-53. <https://doi.org/http://dx.doi.org/10.31002/lh.v2i2>.
- Youdhi Prayogo. "Konsep , Prosedur , Penetapan Margin." *Jurnal Kajian Ekonomi Islam Dan Kemasyarakatan* 4, no. 2 (2011): 114-31. <https://doi.org/https://doi.org/10.30631/al-risalah.v14i01.402>.
- Yudiana, Fetria Eka. "Dimensi Waktu Dalam Analisis Time Value of Money Dan Economic Value of Time." *Muqtasid: Jurnal Ekonomi Dan Perbankan Syariah* 4, no. 1 (2013): 131-43. <https://doi.org/10.18326/muqtasid.v4i1.131-143>.
- Zaeni, Ahmad. "Konsep Sunnah Menurut Sa'Duddin Al-USmani Akar Sejarah Dan Dinamikanya." *Risalah, Jurnal Pendidikan Dan Studi Islam* 6, no. 1 (2019): 105-24. [https://doi.org/10.31943/jurnal\\_risalah.v6i1.112](https://doi.org/10.31943/jurnal_risalah.v6i1.112).

#### *Burgelijk Wetboek*

Supreme Court Regulation No. 2 of 2008 concerning Sharia Economy Law Compilation.