

## THESIS SUMMARY

### A. Background

The establishment of Islamic banks in Indonesia as a financial institution based on Islamic principle increasingly in demand by the public. The *murabahah* financing is a financing that most frequently in demand by customers in Indonesia, evident from the data which researchers will describe, *murabahah* contract from year to year has increased. The turnover (in commercial enterprise) of this financing occupied in the top rank from other types of sharia bank financing. Not only reach top rank in sharia banking of Indonesia but this *murabahah* financing also occupied the top rank in many countries.<sup>1</sup>

**Table 1.1**  
**Types of Sharia Banking Payment in 2007-2012 (on Billion Rupiah)**

Contracts	2007	2008	2009	2010	2011	2012
Mudharabah	5,578	6,205	6,597	8,631	10,229	12,023
Musyarakah	4,406	7,411	10,412	14,624	18,960	27,677
Murabahah	16,553	22,486	26,321	37,508	56,365	88,004
Salam	0	0	0	0	0	0
Istishna	351	369	423	347	326	376
Ijarah	516	765	1,305	2,341	3,839	7,345
Qardh	540	959	1,829	4,731	12,937	12,090
Other	0	0	0	0	0	0
Total	27,944	38,195	46,886	68,181	102,65	147,505

Source: Bank of Indonesia, 2013

Whereas *murabahahbil-wakalah* contract itself is a merger of two such contract (*murabahah* and *wakalah*).*Murabahahbil-wakalah* in Islamic banks generally is devolution of rights / authority of the bank to the customer in terms of choosing which goods for capital work, invest, or even consumptive after the delegation that there will be a sale and purchase (trade) transactions in the form of installments.

Implementation of *murabahahbilwakalah* agreement in BRI Syariah Unit GentengBanyuwangi done by giving representation to the customer for the

<sup>1</sup>Asep Syawaludin, *Analisis Faktor-Faktor yang Mempengaruhi Pembiayaan Murabahah Ba'i Bitsaman Ajil: Study case in: BMT Bina Umat Mandiri di Kota Tegal*, (Semarang: Thesis research, student of Economic and Business fakulty, university of Diponegoro, 2014). p.2.

purchase of goods by way of dropping the funds first. Then purchase the goods receipt is submitted to the bank as proof of purchase of an item has been done by the customer.<sup>2</sup>

To find out more details on the implementation of the *murabahah bil wakalah* financing in BRI Syariah Unit Genteng Banyuwangi, it is necessary for doing a law research with the title “The Implementation of *Murabahah Bil Wakalah* Financing in BRI Syariah Unit Genteng Banyuwangi Perspective of Regulation of Bank Indonesia No.7/46/PBI/2005.

### B. Statement of Problem

Based on the background above, the formulation of the problem of this research are:

1. How is the implementation of *Murabahah Bil Wakalah* financing in BRI Syariah unit Genteng, Banyuwangi?
2. What is *murabahah bil wakalah* financing in BRI Syariah unit Genteng, Banyuwangi accordance to Regulation of Bank Indonesia No.7/46/PBI/2005?

### A. Previous Research

In several previous researchs that can be used as the consideration for researcher are:

**Tabel 2.1 Comparison of Previous Research and Research by Researchers**

No	Name/year	Title	Formal Object	Materiil Object
1.	Moh. Ulin Nuha Student of Faculty of Mu'amalah IAIN Semarang, in 2008	Analisis Hukum Islam Terhadap Implementasi Pembiayaan <i>Murabahah</i> dengan Wakalah dalam Satu Transaksi Di Bpr Syari'ah Asad Alif Sukorejo Kendal	<i>Murabahah with Wakalah</i>	Islamic law analysis, <i>murabahah</i> with <i>wakalah</i> financing in BRS
2.	Abdul Aziz Herawanto Student of the Faculty of Law, University Sebelas Maret	“Implementasi Akad <i>Murabahah</i> dalam Pembiayaan Pemilikan Rumah Bersubsidi Secara Syariah Di Bank Tabungan Negara Kantor	<i>Murabahah</i>	Implementation of <i>murabahah</i> financing in Bank Tabungan Negara

<sup>2</sup>Boby Hendrik A., *Interview* (Banyuwangi, 15<sup>th</sup> of December, 2014).

	Surakarta, 2009	Cabang Syariah Surakarta		
3.	Masriah Student of UIN Sunan Kalijaga Yogyakarta, 2008	Tinjauan Hukum Islam Terhadap Penyertaan Akad <i>Wakalah</i> dalam Transaksi <i>Murabahah</i> (Studi Kasus di BMT Agawe Makmur, Ngaglik, Sleman)	<i>Wakalah</i> and <i>Murabahah</i>	Participation of <i>wakalah</i> agreement on <i>murabahah</i> agreement in islamic law review
4.	Ravikha Naeda Student of UII Yogyakarta, 2010	“Akad <i>Wakalah</i> pada <i>Pembiayaan Murabahah</i> di Bank Pembangunan Daerah Syariah Yogyakarta”	<i>Wakalah</i> on <i>murabahah</i> financing	<i>Wakalah</i> contract on <i>Murabahah</i> financing in Bank Pembangunan Daerah Syariah Yogyakarta

## B. Theoretical Framework

The theoretical framework contains theory about the theory of *murabahah bilwakalah* and juridical concepts as the basistheoretical for assessment and analysis of the problem .

1. Murabahah
  - a. Definition
  - b. Sharia Basic Law
  - c. Pillars and requirements : seller and buyer, object and *IjabQabul*
2. Wakalah
  - a. definition
  - b. Sharia Basic Law
  - c. Pillars and requirements.
3. Murabahah Bil wakalah on Concept of Regulation of Bank Indonesia

## A. Research Method

### 1. Type of Research

In this research, researchers used a type of empirical research or field research.<sup>3</sup>This type of research accordance with research that will be researched about the Implementation of *murabahah bil wakalah* Financing in BRI Syariah

<sup>3</sup>Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum* (Bandung: Mandar Maju, 2008), p. 124.

Unit Genteng Banyuwangi Perspective of Regulation of Bank Indonesia No.7/46/PBI/2005.

## **2. Research Approach**

In this study, using the approach of legislation and juridical empirical or sociological.

## **3. Research Location**

This research located in BRI Syariah St.Wahid Hasyim No. 11 Unit Genteng Banyuwangi.

## **4. Type and Data Source**

Type of data which is used in this research juridical empirical research, consisting of:

- 1) Primary Data
- 2) Secondary Data
- 3) Tertiary Data

Is the supporting data to enhance the research.

## **5. Data Collecting Technique**

In order to obtain an accurate and authentic data from the primary data source, secondary and tertiary, then the data collection techniques that researchers use are:

- a) Method of Interview
- b) Literature Method
- c) Documentation Method

## **6. Processing Data Technique**

An activity to arranged the data that has been collected systematically so that it can be analyzed.<sup>4</sup>The steps are:

- a. Editing
- b. Classifying
- c. Verification

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<sup>4</sup>Bambang Waluyo, *Penelitian Hukum Dalam Praktek* (Jakarta: Sinar Grafika, 2002),p.72.

- d. Analysis
- e. Concluding

## **7. Data Analysis Technique**

In this study, researchers describe fully and comprehensively about the Implementation of *murabahah bil wakalah* Financing in BRI Syariah Unit Genteng Banyuwangi Perspective Regulation of Bank Indonesia No.7/46/PBI/2005 and DSN-MUI, also some literatures about *murabahah bil wakalah* that are sharia banking by Syafi'i Antonio and Fiqh Islam by Wahbah Az-Zuhaili.

## **8. Technique of Data Validation**

### **a. Triangulation**

Triangulation is a technique that is used to check the authenticity of data which utilize something else. There was three kinds of triangulation used in this research, and these are;<sup>5</sup>

- 1) Triangulation with the Method
- 2) Triangulation with theory

### **b. Overtime the Research**

In this overtime methods this research directly researchers often visiting the office of BRI Syariah Unit Genteng Banyuwangi

In this Chapter of finding and discussion, researchers trying to express the theoretical view about the results obtained with some fact support, the following are some exposure to the results of research and it discussion;

### **A. Objective Description of BRI Syariah**

The *profile* BRI syariah is generally as follow:

- 1. History**
- 2. Vision and Mision**
- 3. Financing Product of BRI Syariah**

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<sup>5</sup>Lexy J. Moleong, *Metodologi Penelitian Kualitatif*, (cet-31, Bandung: Remaja Rosdakarya, 2013), p. 330.

a. **Pledged of Sharia (Gadai syariah)**

b. **KKB BRI Syariah iB**

**B. Implementation of *Murabahah Bil Wakalah* Financing in BRI Syariah Unit Genteng Banyuwangi**

The Implementation of *murabahah bil wakalah* agreement in BRI Syariah Unit Genteng Banyuwangi have run smoothly , This known from explanation by Mr.Bobby Hendrik as Vice Head of BRI Syariah Unit Genteng Banyuwangi that;

*Praktek Murabahah atau Murabahah Bil Wakalah tersedia di bank tapi untuk penerapannya belum ada nasabah yang menggunakan akad Murabahah, kebanyakan menggunakan akad Murabahah Bil Wakalah, dan kebanyakan disini nasabah meminta untuk modal kerja”.<sup>6</sup>*

*Murabahah Bil Wakalah* financing on sharia banking generally is giving the right or mandate of the bank to the customer in selecting goods for working capital, investment and for consumptive, which after the delegation that there will be a sale and purchase (trading) transactions in the form of installments after the bank becomes the owner or suspension of the goods that have been chosen by the customer. This contract is combination between *murabahah* contract and *wakalah* contract. Although *murabahah bil wakalah* seems to be one contract, but it such contract are independent, so that this financing not include of hybrid contract<sup>7</sup> or multiple contract that forbidden in Islam.

Implementation of *Murabahah Bil-Wakalah* financing in BRI Syariah Unit Genteng Banyuwangi done by the Bank fully mandated to customers for the purchase of goods by way of dropping funds in advance. This is suitable with Mr. Bobby Hendrik A explanation as follow;

*“BRI Syariah cabang Genteng banyuwangi memberikan kuasa sepenuhnya kepada nasabah untuk pembelian barang kebutuhan, bahan*

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<sup>6</sup> Bobby Hendrik A., *interview* (3<sup>th</sup> of November, 2014 )

<sup>7</sup>*Hybrid Contract or Multiple Contract*, is two contracts in one transaction.

*baku atau modal kerja sesuai akad, yang tentunya setelah dana diterima (dropping dana). Untuk akad pembelian barang kebutuhan, Setelah membeli nasabah diwajibkan untuk menyerahkan bukti pembeliannya kepada Bank”.*

Receipt of goods purchase is submitted to the bank as proof of purchase of an item that has been done by the customer, and signing agreements (*murabahah* and *wakalah*) done instantly in first agreement (*wakalah*).<sup>8</sup> That Mr. bobby has explained before;

*“Pada saat bersepakat setelah menjelaskan beberapa ketentuan dan lain-lain yg disebutkan sebelumnya, nasabah menandatangani dua perjanjian murabahah dan wakalah seketika itu, dari dasar itu, maka nanti di kreditkan sejumlah uang, dimasukkan lah uangnya, setelah uang cair, nasabah menerima uang tersebut kemudian nasabah belanja, nantinya kita (bank) minta bukti pembelian yang bisa berupa kwitansi, nota manual, entah prin outbukti transfer, tergantung , dan jumlahnya”*

The provision as meant above, it is when the customers are meet some of the requirements of the law or to use the funds in the bank BRI Syariah, then after signing two finances itself in first agreement between bank and customer bank give the credit or dropping fund based on the deal, and the price of the goods.

Meanwhile, the researcher also obtained data about profile of BRI Syariah Unit Genteng Banyuwangi. BRI Syariah Unit Genteng Banyuwangi was established on 2011, and completely operating on 2012. This means that approximately 3 years BRI Syariah Unit Genteng Banyuwangi has been operated;

*“untuk BRI Syariah yang berlokasi di Jl.Wahid Hasyim genteng banyuwangi ini adalah BRI Syariah pertama dan satu-satunya yang ada di kota Genteng, bank ini resmi didirikan pada tahun 2011 dan kemudian baru benar-benar beroperasi tahun 2012”*

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<sup>8</sup>Bobby Hendrik A., *interview* (Banyuwangi, 15Desember 2014).

This Sharia bank is included new bank unit which still new established or new operated, this also become one of the reasons why researchers interested to make research in this place.

**C. Implementation of *Murabahah Bil Wakalah* Financing in BRI Syariah Unit Genteng, Banyuwangi perspective of Regulation of Bank Indonesia No. 7/46/PBI/2005**

BRI Syariah Unit Genteng Banyuwangi was established on 2011, and completely operating on 2012. This means that approximately 3 years BRI Syariah Unit Genteng Banyuwangi has been operated. According to the authors, this can also be an indicator allows that the existing system of Sharia in BRI Syariah still not 100% pure to implement a principled of sharia system.

In this case also financing *murabahah bil wakalah* indicate as hybrid contract which is not allow in Islam, because signing of two agreements itself instantly sign in first agreement at the time of *wakalah* agreement or before *wakalah*, in this article, there is no detailed written on the arrangement of financing *murabahah bil wakalah* itself. As described in the hadith narrated by Ahmad and Thabrani.

نهي رسول الله عن صفقتين في صفقة واحدة

“*Rasulullah (SAW)* prohibited two contracts in one transaction” (narrated by Ahmad dan Thabrani).<sup>9</sup>

This Hybrid or multiple contract being reason why researcher assume that *murabahah bil wakalah* financing in BRI Syariah Unit Genteng Banyuwangi not accordance with Regulation of Bank Indonesia Article 9 point d No.7/46/PBI/2005.

From the explanation above, it can be known that the implementation of *murabahah bil wakalah* financing not accordance to Regulation of Bank Indonesia Article 9 point d No.7/46/PBI/2005. Because indicated as a hybrid

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<sup>9</sup>Burhanuddin S., *Hukum Kontrak Syariah*, (BPFE: Yogyakarta, 2009), p.236.



contract that not allow in Islam and not suitable with substance of regulation of Bank Indonesia article that mentioned “*wakalah* contract must be made separately from *murabahah* contract”. Although in its implementation the customer or the bank agrees (*antaradhin*) and neither party feels aggrieved both when *wakalah* or selling, this is still break the rules and are not careful.

Such sanction for a bank that did not carry out the provisions contained in article 2 to with article 19 Regulation of Bank Indonesia No.7/46/PBI/2005 get Administrative sanctions as referred to in article 52 Regulation number 7 year 1992 about banking as replace with Regulation number 10 year 1998 as follow

- a. Reproof instructions (*teguran tertulis*);
- b. The decreasing level of health (*penurunan tingkat kesehatan*); or
- c. Turnover the Office-holders (*penggantian pengurus*)

#### **A. Conclusion**

After do some a series of activities conducted by researchers, such as research planning, conduct research, and analyze the results of the research, it can be concluded as follows:

1. Implementation of *Murabahah Bil-Wakalah* financing in BRI Syariah Unit Genteng Banyuwangi done by the Bank that fully mandated to customers for the purchase of goods by way of dropping funds in advance and signing *murabahah* and *wakalah* instantly at the beginning of the agreement, Then purchase the goods receipt is submitted to the bank as proof of purchase of an item that has been done by the customer.<sup>10</sup>
2. Based on research that has been researched, that the implementation of *murabahah bil wakalah* financing in BRI syariah Unit Genteng Banyuwangi not accordance with Regulation of Bank Indonesia article 9 point d, No.7/46/PBI/2005 about The Agreement and the Settlement Fund Raising For Banks Conducting Business Based on Sharia Principles (*Akad Penghimpunan dan Penyelesaian Dana Bagi Bank yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah*) Mentioned that, “The Bank

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<sup>10</sup>Boby Hendrik A., *wawancara* (Banyuwangi, 15 Desember 2014).

represents to customers (*wakalah*) to purchase goods, then the *Murabahah* Agreement must be made after the goods in principle belonging to the Bank". In part the rest of the explanation that the regulation is mentioned *wakalah* contract must be made separately from *murabahah* contract. The following definitions shall apply in principle of goods belonging to a bank in *wakalah* on *murabahah* agreement is the existence of the flow of funds devoted their goods suppliers or proven by purchase receipts. From the explanation above, it can be known that the implementation of *murabahah bil wakalah* financing not accordance to Regulation of Bank Indonesia Article 9 point d No.7/46/PBI/2005. Because indicated as a hybrid contract that not allow in Islam and not suitable with substance of regulation of Bank Indonesia article that mentioned "*wakalah* contract must be made separately from *murabahah* contract". Although in its implementation the customer or the bank agrees (*antaradhin*) and neither party feels aggrieved both when *wakalah* or selling, this is still break the rules and are not careful. But For receipt of goods purchase that submitted to the bank is legitimate or accordance with Regulation of Bank Indonesia, although researcher assume that bank is not careful and lok like do not want to be bothered with some steps which felt to be longer to implement separating *wakalah* and *murabahah* financing