

CHAPTER I

INTRODUCTION

A. Background of Research

The establishment of Islamic banks in Indonesia as a financial institution based on Islamic principle increasingly in demand by the public. kinds of sharia banking products offered, which includes product of accumulation of funds (funding), distribution product of funds (financing), and services product.¹ Evidenced by increasingly number of customers² who do financing in Islamic banks. According to the Deputy Governor of *Bank Indonesia* (BI), Ronald Waas, he said that in the opening of the iB Vaganza Expo, at Mal Ratu Indah, Makassar, on 30th of May, 2013, recorded the number of customers served by the national Islamic banks until April 2013 reached 14.14 million customers, both in the financial sector and as depositors BUS.³

Islamic Bank or in Indonesia called as sharia bank, is a financial institution that serves mechanisms of economic facility in the real sector through business activities (investment, sale, and others) based on Islamic principles, which the rule of agreement based on Islamic law between banks and other parties

¹ Adiwarman A. Karim, *Bank Islam: Analisis Fiqh dan Keuangan* (Jakarta: PT Raja Grafindo Persada, 2006), p. 97.

² Researcher make word “customer” which mean debtor.

³ Arpan Rachman, “Perbankan Syariah Relatif Cepat Tumbuh”, <http://economy.okezone.com/read/2013/05/30/457/815261/perbankan-syariah-relatif-cepat-tumbuh>, access at 14-01-2015, 5.40 a.m.

to save funds and business activities financing, or activities that are stated in accordance with Islamic values of macro and micro.

The values of the macro which purpose is a justice, *maslahah*, *zakat* system, free of interest (*riba*), free of speculative activities which nonproductive such as gambling (*maysir*), free from the things that are not clear and doubt (*gharar*), free from damaged things or invalid (*bathil*), and the use of money as a medium of exchange. Meanwhile, micro values which must be owned by the subject of Islamic banking is noble qualities that exemplified by the Prophet Muhammad (saw). that is *Siddiq*, *Amanah*, *tabligh*, and *fathonah*.⁴

Sharia principles that implement by sharia bank are implemented in each of its products. One of the products sharia bank which frequently used by customers in order to meet their needs is a *murabahah* financing products. *Murabahah* is a term in Islamic Fiqh which means a specific form of buying and selling when the seller stating the cost of the goods, including the price of goods and other costs incurred to acquire the goods, and the rate of profit (margin) which desired.⁵ The profit level can be in the form of lumpsum or a certain percentage of the cost of acquisition. Payment can be made by spot (cash) or can be done on the next day which mutually agreed. Therefore, *murabahah* is not contain the concept of delayed payment (deferred payment), as it is generally understood by half of people which know *murabahah* only in connection with financing in Islamic banking transactions, but does not understand the Islamic Fiqh.

⁴ Ascaraya, *Akad dan Produk Bank Syariah* (Jakarta :PT Rajagrafindo Persada, 2007), p. 30.

⁵ Ascaraya, *Akad dan Produk ...*, p. 82

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 finances. Not only reach top rank in sharia banking of Indonesia but this financing also occupied the top rank in many countries.⁶

Almost the same thing also been experinced by Islamic banking in other countries. for example, In early 1984, in Pakistan *murabahah* portion amounted to 80%, while the Dubai Islamic Bank in 1989, the portion of *murabahah* financing up to 82% and the Islamic Development Bank (Islamic Development Bank) also recorded 73% of *murabahah* financing.⁷

Then the researchers also found a data from source of Bank Indonesia in 2013, regarding a table of financing that done by customers and the utility of financing from 2007 until 2008.

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

⁶ 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.

⁷ Saeed, Abdullah.. *Bank Islam dan Bunga : Studi Kritis dan Interperetasi Kontemporer tentang Riba (Terjemahan)*. (Yogyakarta : Pustaka Pelajar, 2004), p. 139.

Based on data above from Table 1.1 showed that the financing which most widely applied by the customer is *murabahah* financing, as much Rp.88,004 Million.⁸ It can be concluded from data above which has been presented that *murabahah* financing occupies the highest rating (top rank) that Indonesia customer interested in *murabahah* financing than if compared to other financing.

While *wakalah* or *wikalah* means submission, delegation, and mandating. That is giving representation by one party to another on the represented things. In Arabic, it can be understood as an *AT-Tafwidh*.⁹ Same term by using the word *Al-Hifzu* which mentioned in the word of Allah;

الَّذِينَ قَالَ لَهُمُ النَّاسُ إِنَّ النَّاسَ قَدْ جَمَعُوا لَكُمْ فَاخْشَوْهُمْ فَزَادَهُمْ إِيمَانًا وَقَالُوا حَسْبُنَا اللَّهُ وَنِعْمَ الْوَكِيلُ

Those to whom hypocrites said, "Indeed, the people have gathered against you, so fear them." But it [merely] increased them in faith, and they said, "Sufficient for us is Allah, and [He is] the best Disposer of affairs." QS: Ali Imran Ayat: 173).¹⁰

Whereas *murabahah bil-wakalah* contract itself is a merger of two such contract (*murabahah* and *wakalah*). *Murabahah bil-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. After the bank becomes the owner / suspension of goods that have been chosen by the customer. Although there seems to be a combination both of

⁸ Asep 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 Faculty, University of Diponegoro, 2014). p.2.

⁹ Sayyid Sabiq, *Fiqhus Sunah* (Beirut: Darul Kitab Al-Arabi, 1987), p.213; Mughni Muhtaj, p. 223; Al-Muhaddab

¹⁰ QS: Ali Imran verse: 173.

them, but each such contract is independent, so not including the hybrid contract as that is not allowed in Islam. As described in the hadith narrated by Ahmad and Thabrani.

نهى رسول الله عن صفقتين في صفقة واحدة

“*Rasulullah (SAW)* prohibited two contracts in one transaction” (narrated by Ahmad dan Thabrani).¹¹

In Islamic banking regulations, there are no specific arrangements regarding *murabahah bil wakalah* contract. However, the contract is regulated separately of each other. So it is different from the requirements, pillars, or its implementation provision. As for regulations pertaining about *murabahah bil wakalah* financing, is in Regulation of Bank Indonesia 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*). Implementation of this contract can be found on the financing in Islamic banks finance, and one of Islamic banks that implements this contract is in BRI Syariah unit Genteng Banyuwangi.

Implementation of *murabahah bil wakalah* agreement in BRI Syariah Unit Genteng Banyuwangi done by giving representation to the customer for purchase of goods by way of dropping the funds at first. Then purchase of goods

¹¹ Burhanuddin S., *Hukum Kontrak Syariah*, (BPFE:Yogyakarta,2009), p.236.

receipt is submitted to the bank as proof of purchase of an item has been done by the customer.¹²

To find out more details on the implementation of the *murabaha 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?

C. Objectives of Research

Based on the formulation of the problem above, the purpose of this study is:

1. To know how the implementation of *Murabahah Bil Wakalah* financing in BRI Syariah unit Genteng, Banyuwangi.
2. To know what *Murabahah Bil Wakalah* financing accordance to Regulation of Bank Indonesia No. 7/46/PBI/2005.

¹² Boby Hendrik A., *Interview* (Banyuwangi, 15th of December, 2014).

D. Significance of Research

Hopefully this research can be beneficial for:

1. Teoritically

This research useful for Sharia Business Law scientific development related to *murabahah bil wakalah* financing in Islamic Bank.

2. practically

This thesis is expected useful for academics, Bank Indonesia, also the legal profession in general and especially for practitioners of Islamic banking in determining policies or related to *murabaha bil wakalah* financing.

E. Operational Definition

Operational Definition included concepts as follows:

1. *Murabahah*

Murabahah is The term in islamic fiqh which means a form of certain sale-purchase when the seller publicly-listed declare the cost of goods covering the price of goods and other expenses incurred to obtain goods of these and dsire profit levels (margin).¹³

2. *Wakalah*

Wakalah or *wikalah* means submission , the delegation , or the provision of a mandate. That is the allocation of mandate by a person to another in which things are represented.¹⁴

F. Structure of Discussion

Chapter I : Introduction

¹³ Ascaraya, *Akad dan Produk ...*, p. 82

¹⁴ Sabiq, *Fiqhus Sunah ...*, p.213.

This chapter composed of Background of the Research, statement of problem, objective of research, significance of research, operational definition and structure of discussion.

Chapter II : Review of Related Literature

In this chapter consist of Previous Research and Theoretical Framework. As for whose theories will be exposed is *murabahah* and *wakalah*

Chapter III : Research Method

This chapter consist of Type of Research, Approaches, Research Location, Method of Diverting Data , Type and Data Source, Data Analysis Technique, Data Collecting Technique.

Chapter IV : Finding and Discussion

In this chapter are described and analyzed in depth about data related to discovery, either through primary data and secondary data to answer the formulation of the problem that has been established.

Chapter V : Conclusion and Suggestion

This chapter consists of conclusions and suggestions, conclusions are short answer to formulation of the problem that has been established. While the suggestion was a proposal or recommendation to related parties or parties that have the authority for themes that is studied for the advantages of society, as well as a suggestion for future research.