

CHAPTER II

REVIEW OF RELATED LITERATURE

A. Previous Research

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

1. Reserch by Moh. Ulin Nuha

Thesis research by Moh. Ulin Nuha Student of Faculty of Mu'amalah IAIN Semarang, 2008 about "*Analisis Hukum Islam Terhadap Implementasi Pembiayaan Murabahah dengan Wakalah dalam Satu Transaksi Di BPR Syari'ah Asad Alif Sukorejo Kendal*"¹. In this study explained that the implementation of *Murabahah* with *Wakalah* financing in *BPR* Asad Alif Sukorejo Kendal implemented in efforts to provide mandate to its customers to purchase desired goods independently. Thus assist or facilitate customers in order to obtain ownership of an item that the customer desired. The research conducted by Moh. Ulin Nuha different with research that researchers do, the difference is in aspect of legal research, research location and analysis of the law, where focus of the study conducted by researchers at BRI Syariah Unit Genteng Banyuwangi be based on Regulation of Bank Indonesia No.7/46/PBI/2005.

¹ Moh. Ulin Nuha, "*Analisis Hukum Islam Terhadap Implementasi Pembiayaan Murabahah dengan Wakalah dalam Satu Transaksi Di Bpr Syari'ah Asad Alif Sukorejo Kendal*"http://library.walisongo.ac.id/digilib/files/disk1/84/jtptiain-gdl-mohulinnuh-4157-1-2102172_.p.pdf, accessed at 15-01-2015, 09.34 a.m.

2. Research by Abdul Azziz Herawanto

Thesis research by Abdul Aziz Herawanto Student of the Faculty of Law, University Sebelas Maret Surakarta, 2009 about “*Implementasi Akad Murabahah dalam Pembiayaan Pemilikan Rumah Bersubsidi Secara Syariah Di Bank Tabungan Negara Kantor Cabang Syariah Surakarta*”.² Based on the results, it can be concluded that Implementation of *Murabahah* financing in homeownership financing with subsidy in Bank Tabungan Negara Syariah Unit Surakarta have applied the principles of Islamic sharia. This is reflected in the process of making the agreement between the parties with the applicant bank financing. Solving problems process that is used by the bank also has used legal procedures in Indonesia.

The procedure to solve the problems procedures adopted by the bank that is in dialogue with the applicant, if not found the settlement of the parties resort to arbitration in *Badan Arbitrase Syariah Nasional* then the execution of the decision made by the local religious court. It is based on *Surat Edaran Mahkamah Agung* No. 08 of 2008 that it gives authority to the Islamic Court to execute the decision of *Badan Arbitrase Syariah Nasional* that procedure which have been through based or reference to the laws and regulations that are now applied in Indonesia. If in this study discuss about the implementation of *Murabahah* contract on the financing of housing subsidy according to sharia in Bank Tabungan Negara Syariah unit Surakarta and settlement refers to *Edaran Mahkamah Agung* No. 08 In 2008, then in contrast to researchers who research about the implementation of

² Abdul Azziz Herawanto, “*Implementasi Akad Murabahah dalam Pembiayaan Pemilikan Rumah Bersubsidi Secara Syariah Di Bank Tabungan Negara Kantor Cabang Syariah Surakarta*”, <http://eprints.uns.ac.id/3598/1/100800809200909191.pdf>, accessed at 15-01-2015, 09.40 a.m.

Murabahah Bil Wakalah in BRI Syariah Unit Genteng Banyuwangi which is based on Bank Indonesia Regulation No. 7/46/PBI/2005.

3. Research by Masriah

Thesis research by Masriah Student of UIN Sunan Kalijaga Yogyakarta, 2008 about “*Tinjauan Hukum Islam Terhadap Penyertaan Akad Wakalah dalam Transaksi Murabahah (Studi Kasus di BMT Agawe Makmur, Ngaglik, Sleman)*”.³ The results of these studies is that *wakalah* on *Murabahah* financing in BMT Agwe Makmur cabang Sleman Yogyakarta does not break the rules of law, It is because based on their willingness between two parties that do *murabahah*. Different with studies which researchers do that on the Agreement and the resolution of the Fund Raising For Banks Conducting Business Based on Sharia Principles *murabahah bil wakalah* in BRI Syariah Unit Genteng Banyuwangi according to Regulation of Bank Indonesia 7/46/PBI/2005.

4. Research by Ravikha Naeda

Thesis research by Ravikha Naeda Student of UII Yogyakarta, 2010 about “*Akad Wakalah pada Pembiayaan Murabahah di Bank Pembangunan Daerah Syariah Yogyakarta*”.⁴ The results of this study indicate a awkwardness, where *murabahah* financing in reality bank does not act as a merchant or seller because in practice the bank does not have a stock / inventory that can be directly purchased by the customer. Bank in the transaction of buying and purchasing using the services of

³Masriah, “*Tinjauan Hukum Islam Terhadap Penyertaan Akad Wakalah dalam Transaksi Murabahah (Studi Kasus di BMT Agawe Makmur, Ngaglik, Sleman)*” <http://digilib.uin-suka.ac.id/1614/>, accessed at 15-01-2015, 09.50 a.m.

⁴ Ravikha Naeda “*Akad Wakalah pada Pembiayaan Murabahah di Bank Pembangunan Daerah Syariah Yogyakarta*” <http://repository.uui.ac.id/410/SK/I/0/00/001/001025/uui-skripsi-akad%20wakalah%20pada%20pe-06410242-RAVIKHA%20NAEDA-3631922794-preliminari.pdf>, accessed at 15-01-2015, 10.50 a.m.

the supplier to provide goods according to customer wants. However, in providing of goods, customers are often allowed to find their own supplier and make a purchase, while the banks only give a mandate to the customer, so that customers be the agent bank to make a purchase is accompanied by the transfer of funds. This mandate is referred to as *wakalah* made by the bank to the customer. *Wakalah* is done by agreement between the bank and its customers. The study recommends the necessity socialization of *wakalah* in *murabahah* financing, so that people do not equate *murabaha* with a conventional bank credit agreements contain elements of usury. Banks should be more consistent with his position as *musytari* of *wakalah*, where *murabahah* financing which undertaken should indicate the position (*Ba'i*) and seller (*musytari*) buyer. This research is different with the researcher law research, the differences are type of research and location of research.

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 Surakarta, 2009	“ Implementasi Akad <i>Murabahah</i> dalam Pembiayaan Pemilikan Rumah Bersubsidi Secara Syariah Di Bank Tabungan Negara Kantor Cabang Syariah Surakarta	<i>Murabahah</i>	Implementation of <i>murabahah</i> financing in Bank Tabungan Negara

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 Pembiayaan <i>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 about the theory of *murabahah bil wakalah* and juridical concepts as the basis theoretical for assessment and analysis of the problem .

1. Murabahah

a. Definition

Etymologically *murabahah* derived from the word *Ar-Ribhu*, النماء (an-Namaa') which means to grow and developing, or *murabahah* also means *Al-Irbaah*, because one of the two persons who transact provide benefits to others.⁵

According to Wahbah Az-Zuhaili *Murabahah* is to sell goods with a price that is obvious, so it may be practiced in the sale and purchase transactions. An example is, if someone says, "I sell this goods with price of one hundred and

⁵ Imron Al Husein, http://alhushein.blogspot.com/2011_12_12_archive.html, access at 25-01-2015, 22.00 p.m.

ten". That way, he took a clear advantage. It's not much different for saying, "Give me a profit of ten *dirham*."⁶

Not much different from Ascarya opinion stating that the *Murabahah* is a term in Islamic Fiqh which means a certain trade when the seller stating the cost of goods, including the price of goods and other costs incurred to acquire the goods, and the rate of profit (margin) which is desired. The profit rate can be in the form of lumpsum or a certain percentage of the cost of acquisition.⁷ Payment can be done in spot (cash) or can be done later, with gether agreed. Because of it , *murabahah* not by itself containing the concept of payment postponed (deferred payment), as generally understood by most people who know *murabahah* only in relation to financing transactions in Islamic banking industry , but do not understand the islamic fiqh .

In addition from the definition above, there is some understanding of *Murabahah* issued by the experts, according to Ibn Rushd, *Bai 'al-Murabahah* is selling goods at the original price agreed with the additional advantage. In line with the opinion of experts and examples of *Murabahah* above, according to Ashraf Usmani, *Murabahah* is:

“*Murabahah* is a particular kind of sale where the seller expresly mentions the cost of the sold commodity he has incurre, and sells it to another person by adding some profit thereon. Thus, *Murabahah* is not a loan given interest; it is a sale of commodity for cash/deferred price. ”

⁶ Wahbah Az-zuhaili, *fiqh islam: Hukum Transaksi Keuangan, Transaksi Jual Beli, Asuransi, Khiyar, Macam-Macam Akad Jual Beli, dan Akad Ijarah (Penyewaann)*. Vol 5 (jakarta:Gema Insani,2011) p.358.

⁷ Ascaraya, *Akad dan Produk ...*, p. 82.

Then according to Fatwa DSN-MUI, *Murabahah* is selling an item with confirms the purchase price to the buyer and the buyer paid the price as profit. And according to Article 1, paragraph 7 PBI 7/46/2005, *Murabahah* is selling goods amounted the cost of goods plus the agreed profit margin.⁸

From some understanding which have been described above, the researcher can conclude that the *Murabahah* is clear transaction and clear explanation about the benefits to be gained by the seller, which profits must be known by the buyer.

b. Sharia Basic Law

Murabahah is a contract that allowed as way of *syar'i*, and it's supported by *jumhur Ulama'* (the majority of scholars) of the companions, *tabi'in* and scholars from various Madzhab or streams. The basic law of this islamic contract are:

1. Al-Qur'an

a) Al-Baqarah: 275

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ۚ ذَٰلِكَ بِأَنَّهُمْ قَالُوا
إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا ۚ وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ۚ فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَىٰ فَلَهُ مَا سَلَفَ
وَأَمْرُهُ إِلَى اللَّهِ ۚ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ ۖ هُمْ فِيهَا خَالِدُونَ

“Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, "Trade is [just] like interest." But Allah has permitted trade and has forbidden interest. So whoever has received an admonition 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

⁸ Regulation of Bank Indonesia No.7/46/PBI/2005.

the companions of the Fire; they will abide eternally therein.” (QS: Al-Baqarah Verse :275).⁹

b) QS. Al-Ma'idah: 1

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ ۖ أُحِلَّتْ لَكُم بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُتْلَىٰ عَلَيْكُمْ غَيْرَ مُحِلِّي الصَّيْدِ
وَأَنْتُمْ حُرُمٌ ۚ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ

“O you who have believed, fulfill [all] contracts. Lawful for you are the animals of grazing livestock except for that which is recited to you [in this Qur'an] - hunting not being permitted while you are in the state of ihram. Indeed, Allah ordains what He intends (Al-Maidah verse 1)”¹⁰

c) QS. al-Baqarah: 280

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ ۚ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ ۖ إِنْ كُنْتُمْ تَعْلَمُونَ

“And if someone is in hardship, then [let there be] postponement until [a time of] ease. But if you give [from your right as] charity, then it is better for you, if you only knew (QS. Al-Baqarah:280)”¹¹

2. Hadith

a) Hadith by prophet Muhammad Saw:

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ قَالَ: إِنَّمَا الْبَيْعُ عَنْ
(تَرَاضٍ، (رواه البيهقي وابن ماجه وصححه ابن حبان

⁹ QS. Al-Baqarah verse 275.

¹⁰ QS. Al-Maidah verse 1.

¹¹ QS. Al-Baqarah verse 280.

Narrated by Abu Sa'id Al-Khudri That of *Rasulullah* saw said , "behold of buying and selling it should be done by means of mutual *ridha*." (HR. al-Baihaqi and Ibnu Majah, and valued *shahih* by Ibnu Hibban).¹²

b) Hadith *Rasulullah* narrated by Ibnu Majah:

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ قَالَ: ثَلَاثٌ فِيهِنَّ الْبَرَكَةُ: الْبَيْعُ إِلَى أَجَلٍ، وَالْمُقَارَضَةُ، وَخَلْطُ الْبُرِّ بِالشَّعِيرِ لِلْبَيْتِ لَا لِلْبَيْعِ رَوَاهُ ابْنُ مَاجَةَ عَنْ صَهْبٍ

there are three things that blessing: sale-purchase not in cash , *muqaradhah* (*mudharabah*) , and mix with *jewawut* wheat for household needs , not for sale (HR. Ibnu Majah from Shuhaib).

c) Hadith of prophet Muhammad Saw narrated by Tirmidzi:

الْصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إِلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ أَحَلَ حَرَامًا وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَلَالًا أَوْ أَحَلَ حَرَامًا

"Peace can be made between the Muslims except peacefull that forbids the lawful or justify the unlawful ; and the Muslims are bound by their terms except that forbid the lawful requirements or justify the unlawful (HR. Tirmizi from 'Amr bin 'Auf).¹³

d) Hadith of prophet Muhammad Saw narrated by *jama'ah* :

¹² Ryan, <http://www.murabahahcenter.com/2013/08/ayat-ayat-jual-beli-murabahah.html>, accessed at 26 january 2015, 08.00 a.m

¹³ Ibn Hajr Al-Asqalani, *Bulughul Maram*, Trans. A Hassan, (cet. I ,:surabaya:CV Pustaka Tamam dan Pesantren Persatuan Islam Bangil, 1991) p.453.

“Procrastinate (payment) carried out by persons are capable of is a *zalim*”

- e) Hadith of prophet Muhammad Saw narrated by Nasa’i, Abu Dawud, Ibu Majah, dan Ahmad:

“procrastinate (payment) carried out by persons are capable of lawful of self-respect and the issuing of sanctions to him”

- f) Hadith of prophet Muhammad Saw narrated by `Abd al-Raziq dari Zaid bin Aslam:

“Prophet Muhammad aw asked about the 'urban (advance) in the purchase , then he justify it”

3. Ijma' and *Qaidah* of *fiqh*

- a) Ijma' by majority of scholars To purchase by way of *Murabahah*.¹⁴
b) *Qaidah* of *fiqh*:

الاصل في المعاملات الاباحة الا ان يدل دليل علي تحريمها

“Basically, all the transactions are lawful, except there are *dalil* which illegitimate it”

c. Requirements of Ba'i Al-Murabahah

The requirements of *Ba'i Al-murabahah* are :¹⁵

- 1) knowing about the first price (the purchase price).

In order to *murabaha transactions* is valid, both buyers should know the price first, knowing the price is requirement of buying and selling. This

¹⁴ Ibnu Rusyd, *Bidayah al-Mujtahid*, juz 2, hal. 161; see al-Kasani, *Bada'i as-Sana'i*, juz 5 p. 220-222.

¹⁵ Az-Zuhaili, *Fiqh Islam Vol 5...*,p.358.

requirement also applies to all payments as same as *murabahah*, such *tawliyah*, *isyarak* and *wadhi'ah*. That's because these transactions are equally dependent on the first capital. For that, if the first price is not known, then the *murabaha* transaction is invalid until the first known place of the transaction price. If the first price is not known until the two sides split, then the transaction is declared invalid.

2) Knowing number of profit that asked by the seller.

Advantages or margin that requested the seller should be clear, because profits are part of the price of goods. While knowing the price of buying and selling is trade a legitimate requirement.

3) Capital issued should be *mitsliyat* goods (goods that have similar variants).

For example, items that can be measure, weighed, and sold units with adjacent variants. It is a requirement for the *murabahah* and *tauliyah*, regardless of the sales made by the first seller or with others, also asked whether the benefits are similar to the first capital or not (after the price was assayed).¹⁶ If the price in the form of something that does not have a similar variants such as merchandise, then it should not be sold by way of *murabahah* or *tawliyah* to someone who does not have the merchandise. Because *murabahah* and *tawliyah* are sold in accordance first price (purchase price) with the added advantages

4) Buying and selling *murabahah* on goods of usury should not cause of *riba nasiah* to the first price.

¹⁶. Merchandise (*'arudh*) is anything other than Dirham and Dinar

Example is purchase of goods that are measured or weighed with similar goods, and by the same amount. In this case, the buyer shall not resell the way *murabahah*, because *murabahah* is sold in accordance with the first price and certain added advantages. While be additional to property of usury is completely usury, not profit. Also not allowed to sell it in a way of *wadhi'ah*, but may sell it in a way *tawliyah* and *isyrah* which sell in accordance with the prices of all goods or in part. so that there is no element of *riba* in it

As if the types of goods are different, so it shall be sold by way of *murabahah*. For example, buy one dinar with ten dirhams, then sell it to take advantage of the dirham or cloth.

5) The first transaction should be valid

If the first transaction is not valid, then the goods sold by way of *murabaha* because *murabaha* is sold according to the price first (capital), with the added advantages. While in buying or selling unauthorized, ownership of goods can only be determined by the value of goods or similar goods, and not because of the price, because pricing is proven invalid with no legitimate transaction.

Then according to Dr. Muhammad Syafii Antonio *Ba'i Al-Murabahah* (which applied to the Bank) is as follows:¹⁷

- a) The seller tells the capital cost to the customer.
- b) The first contract to be valid in accordance with the stipulated pillars.

¹⁷ Muhammad Syafi'i Antonio, *Bank Syariah: dari Teori ke Praktik* (Jakarta:Gema Insani, 2001) p.102.

- c) The contract shall be free from usury (*riba*)
- d) The seller must explain to the buyer in case of defects in the goods after purchase.
- e) The seller must deliver all matters relating to the purchase, for example, if a purchase is made in debt.

In principle, if the requirement in (a), (d), or (e) is not fulfilled, the buyer has a choice:

- a) Continuing the purchase as it is
- b) Return to the seller and disagree over the goods sold.
- c) Cancel the contract.

Sale and purchase with way of *Al-Murabahah* above only for the goods or products that have been controlled or owned by the seller at the time of negotiation and contracting. When the product is not owned by the seller, the system used is *murabahah* to the purchase customer (*murabahah KPP*). it named so because the seller simply hold goods to meet the needs of buyers who order them. In addition, the system of buying and selling can be explained as follows.

- a. The purpose of *murabahah* to purchase buyer (*KPP*)

The idea of sale and purchase of *KPP* seems rooted in the two following reasons. *First*, look for experience. Of the contracting parties (customer of purchases) ask the other party (the buyer) to buy an asset. The buyer promises to replace the asset purchase and give him the advantage. buyer choose this purchase system, which is usually done on credit, more because they want to find information rather than reason urgent need for these assets.

Second, look for financing. In Islamic banking operations, procurement fulfillment motif assets or capital works are the main reasons that push came to the bank. In turn, the financing that provided will help expedite cash flow for that buyer.

How to sell on credit is not actually part of *murabaha* system requirement or *murabahah* KPP. However, this installment transactions dominate the practice of the implementation of the two types of *murabahah*. This is exactly because memng someone will not come to the bank except to obtain credit and pay in installments.

b. Type of *murabahah* to the customer purchasing (KPP)

The promise of customer to purchase goods in *Ba'i Al-Murabahah* could include a binding promise, also not binding. The previous Shariah scholars agreed that customer should not be bound to fulfill the obligation to buy the goods that have been ordered. Today, the Islamic Fiqh Academy¹⁸ also establishes the same law. The Reason is, buyer of goods there at the beginning has given choice to the customer to keep buying stuff it or reject it.

Offers - for later still buy or refuse - done because at the time of beginning transaction that person does not have the goods to be sold. sells goods that do not possess are prohibited in Sharia because including *Ba'i Al-Fudhuli*.¹⁹ The previous sharia scholars have given detailed reasons of such violations. However, some modern sharia scholars showed that the context of this kind sale and

¹⁸ The Islamic Fiqh Academy or *Mujamma Al-Fiqhi Al-Islami* is an autonomous entity under *Rabitah Al-Alam Al-Islami*, based in Makkah Mukarramah.

¹⁹ Sayyid sabiq, *Fiqhus Sunnah* (beirut: Darul-Kitab Al-Arabi, 1987), cetakan ke-8, vol.III, p.117-118.

purchase of *murabahah* where "no goods" different from "sell without ownership of the goods". They argue that the promise to buy the goods could bind the buyer. Moreover, if the customer can "go" so it would be very suffer of financial loss to the bank or provider of goods. Purchased goods according to the order, but he left just like that. Therefore, economists and contemporary scholars establish that the law of it bound the customers. This is to avoid "*mudharat*".

d. Some General Provisions

1) Guarantee

Basically, the guarantee absolutely not requirement or pillars to fulfilled *ba'i al-murabahah*, as well as in *murabahah KPP*.²⁰ Guarantee is intended to keep the buyer not think little of the order. The buyer (finance providers / banks) may ask the buyer (applicant / customer) a guarantee (*Rahn*) for carry out. In technical operations, goods that ordered may be one of the acceptable guarantees for debt repayment.

2) Debt in *Murabahah KPP*

In principle, customer of debt settlement in *KPP murabahah* transaction has nothing to do with the other transactions done by the customer to third parties for the ordered items. Is the buyer resells the goods at a profit or a loss, he still obliged to complete the its debt to the buyer.

If customer sells the goods before the installment period ends, he is not obliged to immediately pay off the entire installment. If the sale of the asset is loss, for example, if the customer is a trader as well, customer still had to

²⁰ Antonio, *Bank Syariah...*, p.105.

complete the loan as agreed beginning. this is because the sale to third parties who do contract the customer is completely separate from *Al-Murabahah* contract first with the bank.

3) Postponement by the debtor who capable of it

A client who has the ability to economically prohibited postpone debt settlement in *al-murabahah* contract. If a customer procrastinate settlement of the debt, the buyer can take action: take legal procedures to recover the debt and claiming financial losses caused by the procrastination. Prophet Muhammad (saw) had warned in the hadith that debtors is able but careless of it , "the neglect of debt payments (when he can), it can be sanctioned and defamed (sort of blacklist-pen)."

Procedures and mechanisms to resolve disputes between Islamic banks and customers has been arranged through Badan Arbitase Muamalah Indonesia (BAMUI), an institution that was established jointly by the attorney general of the republic Indonesia and MUI.²¹

4) Bankrupt

If the customer who indebted considered bankruptcy and failed to complete the the debt because it really was not capable economically and not through ignorance, while he was able, creditors must postpone debt bill until he was able to return. In this regard, Allah says

²¹ Further explanation about BAMUI, reference the book by the author and colleagues other editorial, *Arbitrase Islam di Indonesia* (1994).

وَاتَّقُوا يَوْمًا تُرْجَعُونَ فِيهِ إِلَى اللَّهِ ۖ ثُمَّ تُوَفَّى كُلُّ نَفْسٍ مَا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ

“And if someone is in hardship, then [let there be] postponement until [a time of] ease. But if you give [from your right as] charity, then it is better for you, if you only knew....” (al-baqarah: 280).²²

e. Implementation in Bank

Murabahah KPP can generally be applied to the loan product for purchasing investment goods, both domestic and abroad such as through a letter of credit (L / C). This scheme is the most widely used because it is simple and not too unfamiliar to the people who usually transact with banks in general.

sharia banking in Indonesia are using *al-murabahah* sustainably (roll over / evergreen) as for working capital, when in fact, *al-murabahah* is a short-term contract with a contract (one short deal). Al-Murabahah not exactly applied to working capital scheme. *Murabahah* contract is more appropriate for such a scheme. This is because the principle of *mudarabah* has a very high flexibility.

1) Benefit of *Ba'i Al-Murabahah*.

In accordance with the nature of the business (*tijarah*), *ba'i al-murabaha* transaction has several benefits, as well as the risks that must be anticipated.²³ *Ba'i al-murabaha* provide many benefits to the Islamic banks. One of them is the benefit that arises from the difference between the purchase price of the excess purchase price from the seller to the selling price to the customer. In addition, the

²² QS.Al-Baqarah verse 280.

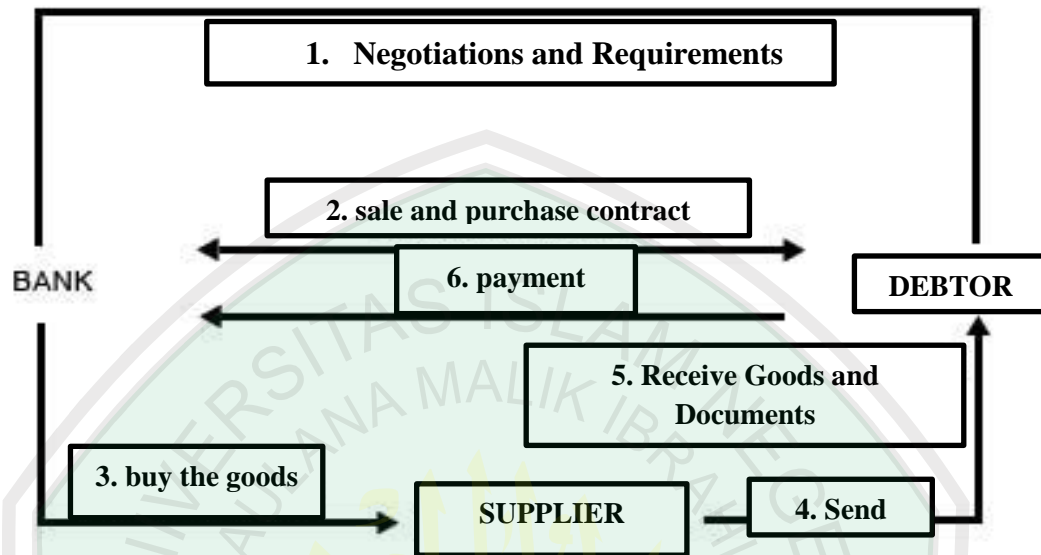
²³ Antonio, *Bank Syariah*...,p.106.

system *Ba'i al-murabahah* is also very simple. It facilitates the handling of the administration in the Sharia bank.

Among the possible risks should be anticipated as follows:

- a. Default or negligence; customers deliberately not paying installments.
- b. Comparative price fluctuations. It occurs when the price of an item in the market rise after the bank bought it for clients. Bank does not change the sale and purchase of price.
- c. Rejection of the customer; delivered goods may be rejected by customers for various reasons. It could be because damaged in transit so that customers do not want to accept it. Therefore, should be covered by insurance. Another possibility for the customer to feel different from specifications of the goods ordered by him. If the bank has signed a purchase contract with the seller, the item will belong to the bank. Thus, banks have a risk to sell it to another party.
- d. For Sale; because *ba'i al-murabahah* is sale and purchase of the debt, then when the contract is signed, the goods become the property of the customer. Customers are free to do anything to his assets, including to sell them. If this occurs, the risk of default would be big.

In general, the banking application from *Ba'i al-murabahah* in illustrated in the following scheme.

Gambar 2.1 Scheme of *Ba'i Al-Murabahah*

2. Wakalah

a. Definition of Wakalah

Here is some definitions *wakalah* from the opinions of some classical fiqh scholars until the experts today. According Wahbah Az-Zuhaili, etimoogically the meaning of *wakalah* or *wikalah* (with waw fathah and kasrah) is protecting.²⁴ It is as the word of Allah "and they replied, Allah enough (being a helper) for us and he's the best of protectors." (Ali Imran: 173) That is *Al-Haafiz* (protector or guardian) and his words, "there is no god besides Him, then let Him as a protector." (Al-Muzammil: 9).

Al-farra said "*wakalah* intent of this paragraph is that protecting.", *Wakaalah* also means handover. For example, *wakkala amrahu ila fulaan* (he handed over his business to fulan). For example also words, "tawakkaltu 'alallah (I

²⁴ Az-Zuhaili, *Fiqh Islam Vol 5* ...,p.590.

surrender to Allah)." As well as in word of Allah, "And only to Allah people should faith and put their trust." (Ibrahim: 12).

And Allah says when preach about the Prophet Hud a.s., "verily I put my trust in Allah, my Lord and your Lord." (Hud: 56) It means, "I am relying on Allah and I surrender my matter to Him".

In the definition of *Syara, wakaalah* according to the scholars of *Madzhab* Hanafi, is the act of someone puts someone else in his place to take legal action that is not binding and unknown. Or mandate of legal action and guard to something to others who became *wakil*. The legal actions include expenditure to property, such as sale and purchase, as well as other things that are *syara'* can be represented as also give permission to others to get in the house.

The scholars of *madzhab* Syafi'i said that *wakalah* is devolution to something that can be done alone and can be delegated to others, to be made by *wakil* during the owners of original authority was still alive. Restrictions while still living with this is to differentiate with wills.

Then according to Sayyid Sabiq *wikalah* or *wakalah* means handover, delegation, or mandates. In Arabic, it can be understood as an *at-tafwidh*. Example sentence "I surrender my matter to Allah" represents definitions of the term.²⁵

same definition with using word *al-hifu* mentined in Allah word:

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

²⁵ Sayyid Sabiq, *Fiqhus Sunnah* (beirut: darul-kitab al-arabi, 1987), cetakan ke-8, vol III, p.213; mughri muhtaj, vol, II, p.223; al-muhadadab, vol I, p.350.

they said, "Sufficient for us is Allah , and [He is] the best Disposer of affairs."(*Ali Imran: 173*)”²⁶

However, the question as *al-wakalah* in this chapter is the delegation of power by one party to another in the things represented. Then *wakalah* in DSN-MUI is delegation by one party to another in matters that may be represented.²⁷ Of the several presentation above,

researchers can conclude that *wakalah* is authority, delegation and or handover the mandate by one party to another in matters that may be represented.

b. Sharia Basic Law

Islamic sharia law on *wakalah* make because people need it. Every people not always has the ability or opportunity to resolve all their own affairs. On one occasion, someone needs to delegate a job retention to others to represent himself.

1) AL-Quran

One of the basic permissibility of *al-wakalah* is the word of Allah regarding the story of Ashabul Kahfi (Al-Kahfi: 19)

وَكَذَلِكَ بَعَثْنَاهُمْ لِيَتَسَاءَلُوا بَيْنَهُمْ ۚ قَالَ قَائِلٌ مِنْهُمْ كَمْ لَبِثْتُمْ ۖ قَالُوا لَبِثْنَا يَوْمًا أَوْ بَعْضَ يَوْمٍ ۚ قَالُوا رَبُّكُمْ أَعْلَمُ بِمَا لَبِثْتُمْ فَابْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ فَلْيَنْظُرْ أَيُّهَا أَزْكَى طَعَامًا فَلْيَأْتِكُمْ بِرِزْقٍ مِنْهُ وَلْيَتَلَطَّفْ وَلَا يُشْعِرَنَّ بِكُمْ أَحَدًا

And similarly, We awakened them that they might question one another. Said a speaker from among them, "How long have you remained [here]?" They said, "We have remained a day or part of a day." They said, "Your

²⁶ QS. Al-Imran verse 173.

²⁷ Fatwa DSN-MUI about *wakalah* No.10/DSN-MUI/IV/2000

Lord is most knowing of how long you remained. So send one of you with this silver coin of yours to the city and let him look to which is the best of food and bring you provision from it and let him be cautious. And let no one be aware of you. (QS: Al-Kahfi Verse: 19).²⁸

This verse describe the departure of one of *Ashabul Kahfi* acting on behalf of his friends to represent them in choosing and buying food. Another verse that leads into *al-wakalah* is the story of Prophet Yusuf as when he said to the king (Yusuf: 55)

قَالَ اجْعَلْنِي عَلَى خَزَائِنِ الْأَرْضِ ۚ إِنِّي حَفِيظٌ عَلَيْمَ

(Yusuf said) , "Appoint me over the storehouses of the land. Indeed, I will be a knowing guardian.".(QS: Yusuf verse: 52).²⁹

In the context of this verse, the Prophet Yusuf ready to be representative and mandate bearers keep the "federal reserve" the land of Egypt.

2) Al-hadith

Many hadiths which can be used as a legal basis for the validity of wakalah, including, HR. Ahmad from Abu Rafi 'says:

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَزَوَّجَ مَيْمُونَةَ حَالًا وَبَنَى بِهَا حَالًا وَكُنْتُ الرَّسُولَيْنَهُمَا

“That the Prophet married Maimunah under lawful conditions, and copulate in a lawful state, and I was delegations between them”.

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ : أَرَدْتُ الْخُرُوجَ إِلَى خَيْبَرَ فَأَتَيْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقُلْتُ

لَهُ : إِنِّي أَرَدْتُ الْخُرُوجَ إِلَى خَيْبَرَ فَقَالَ إِذَا أَتَيْتَ وَكَيْلِي فَخُذْ مِنْهُ خَمْسَةَ عَشَرَ وَسُقًا

²⁸ QS. Al-Kahfi verse 19.

²⁹ QS. Yusuf verse 55.

From Jabir r.a. said, I want to go out to Khaibar, and then I came to the Prophet., I say to him, "Truly I want to go out to Khaibar". Then He said, "When you come to my representative in Khaibar, so take him 15 wasaq." (HR. Abu Daud).³⁰

In everyday life, the Prophet delegate to others in handling affairs. To pay the debt, had the determination and payment depute, represents camel management, delegation of propaganda, and so forth is a concrete example of the recognition of *al-wakalah* in Prophet era.

تَوَكَّلَ اللَّهُ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عُمَرُو بْنُ أُمَيَّةَ الصَّمِرِيِّ فِي نِكَاحِ أُمِّ حَبِيبَةَ بِنْتِ أَبِي سُفْيَانَ

“Rasulullah Saw has represent himself to Umar Bin of Al Dhamiriy when conducting marriage covenants with Umi Habibah Binti abi safyan”

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَعَثَ أَبَا رَافِعٍ وَرَجُلًا مِنَ الْأَنْصَارِ فَرَوَّجَاهُ مَيْمُونَةَ بِنْتَ الْحَارِثِ

"That the Prophet represents to the Abu Rafi 'and an Ansar to representations marry Maimunah binti Al-Harith " (Malik No. 678, book Al-Muwatta”(chapter Hajj)

3) Ijma'

Ulama agreed on permissibility of *al-wakalah*, they even tend to think of it is Sunnah by reason that it includes the type of *Ta'awun* or helping on the basis

³⁰ Ibn Hajr Al-Asqalani, *Bulughul Maram*, Terj. A Hassan, (cet. I, :surabaya:CV Pustaka Tamam dan Pesantren Persatuan Islam Bangil, 1991), p.459.

of kindness and *taqwa*. Helping Each Other. Mentioned in the Qur'an and the Sunnah of the Prophet Muhammad.³¹

C . Pillars and Requirements of Al-Wakalah

Pillars And Requirements of *Wakalah* According Syafi'iyah, pillars and requirements of *al-wakalah* contract are as follows:

1) Al-Muwakkil (people who give mandate).

A giver mandate required having the right *tasharruf* (uses goods) lawfully upon the sectors that authorizes .It is adapted to the requirements in these part. As is the provision of mandate to spend good/property, and a requirement for employers the There are problems that only excluded , namely the problem of the blind person although basically not valid because the limitation to make transaction conducted sales-and- appraise with good sigh, but allowed depute sales-and- others were continuing.

2) *Al-Wakil* (The recipient of a mandate).

- a) as the grantor or giver a mandate; the recipient of a mandate also made based on having the right of *tasharruf* lawfully upon the sectors that mandated. So that a child and an insane person unauthorized to be vice/*wakil*. A blind man also illegitimate to be vice in purchase of the other and work required able to see. Excluded the problems sent a gift, give a permit entrance of a house , by which a thing may deputed to young boy who has reached the tamyiz and trustworthy.

³¹ Antonio, *Bank Syariah...*, p.122.

- b) a person who accepts a mandate must be made based on *Mu'ayyan* (clear person). So that unauthorized representate work on one of two persons without clearly appointed or said " i represent to sell this house to anyone who feels want it."
 - c) Recipients must having a fair charracter , if the mandate derived from a *qadhi* , or when receiving the mandate of a trustee to sell treasure those who were in his pledge .
- 3) Shighat (the words of representative).
- a) Language of the mandate grantor (*al-muwakkil*) should represent al-wakil handing over mandate to *al-wakil* Well shaped *sharih* (clear) as his statement "i represent to you to sales my house, and *kinayah* (implied and can be interpreted as a distinct), like the statement "i give you position to sales my house".
 - b) From the recipients of mandate (*al-wakil* only enough accept it (*qabul*) , though without any words and only tangible action .
 - c) The language of the giving mandate not strung with a bond of certain requirements. Like statement "if Zaid coming from the city, then you become my vice to selling this goat." In contrast if the requirements come into force in spending affairs (*tasharruf*) on the type of *al-wakalah al-munjazah* (a form of mandate is exist), as the statement "i represent to you to sell this house, just please it sell it in the beginning of Muharram instead". Shighat of *al-wakalah* alsolimitation duty period, as in the period of a week or a month.
- 4) Al-Muwakkal fihi (Object or Job Which Mandating).

- a) The object must be shaped as a job which should be the right during which authorizes (*al-muwakkil*). So that unauthorized depute *al-muwakkil* sale of goods not shared, or will have. Except mandating the sale of goods with *taba'i* (follow the goods that there have been in possession). Such as, depute to sell the fruit which that fruits from *al-muwakkil*'s tree. Although there is no fruit, but this is was valid because the tree belongs to *al-muwakkil*.
- b) Work that authorizes should be clear specifications and type, although only from one review. It is legal to say, "i represent to you to pay my debt", although *al-wakil* not know exactly which debt and people who give the debt.
- c) Objects must be from the kind of job that accept for mandates in others .So the Scholar argues, unauthorized mandating just a matter of pure badaniyah of worship, as prayers and fasting month. But allowed to represent of worship that the ability of bodies being the implementation of the requirement. not compulsory requirement, as hajj and umrah. Or mandating things that are completing in a worship , as the division of zakat property to those who have the right.³² Then according to Wahbah Az-Zuhaili validity of the requirements for *wakaalah* then required some things in *sighah*, both parties, and the object of agreement.³³

Second parties who make agreement is a person who delegating (*al-muwakkil*) and a person who becomes vice (*al-wakiil*) .The scholars agreed that may not present in *Majelis* of the transaction who was represented. Also *muwakkil*

³² Ust. Darul Azka, Konsep dan Dasar-Dasar Al-Wakalah, <http://misykat.lirboyono.net/konsep-dan-dasar-dasar-al-wakalah/>, access at 13-01-2015, 13.00 WIB.

³³ Az-zuhaili, *fiqh islam waadilatuhu* Vol 5 ..., p.595.

allowed to a woman or a person who was sick. *Muwakkil* also there shall be in the house of the transaction who was represented in healthy condition, different with an opinion of Abu Hanifah

The vice are all one who may conduct of legal proceedings for himself in something, where he also been allowed to vice others in the affairs. However, he was never to representing a person to against his enemies.

According to the Madzhab Maliki scholars, may not represent to the the unbelievers (*kafir*) to make the sale, purchase or contract *salam* (message). It in order he does not do things that are forbidden. Also may not represent him to receive payment of the Muslims, so he does not feel his position higher than them.

1.1 Requirements of Shighat

According to some scholars of Mazhab Syafi'i, there are two requirements of *shighat*:

- a. *wakaalah* agreement continuing with pronunciation/*lafal* that shows the presence of representatives to the mandating, both blatantly and in innuendo (not ostentatiously). For example, "i mandate you to sell my house" or, "i put you in my position to sell my house" in qabul not be required of utterance, but enough with deeds, allow guests such as eating foods which served.
- b. According to the Syafi 'i scholar, required agreement *wakaalah* not relate with the requirements, like someone's statement, " if fulan came from the journey, then you become my vice to do this." however, may relate it with something if something had happened after *wakaalah* it implemented, such as "i mandate you to sell my house with a requirements that sales have been

implemented when the arrival of fulan” also legal limit *wakaalah* with time as restrictions representative for one month or one year.

1.2 Requirements of *Muwakil*

Muwakkil requirement is the owner of authority to conduct action on something he represent and all the consequences of law of actions of that goes to him. With this illegitimate a representative of an insane person, a person who is not realized that and a young girl who has not been *mumayyiz*. Because, they are not having the mind who is one of the requirements prowess law (*al-ahliyyah*). In addition, all legal consequences of the act of what they are doing do not apply to them.

In other side, unauthorized also representatives of small children who already *mumayyiz* to an act that he had not own authority, such as divorce, grant, alms and legal acts like that can only inflict harm. Bring the benefits of pure legal acts, as accepting donations, then the kid may *mumayyiz* mandating to others.

1.3 Requirements of Wakil

Vice is required is a person who understood. It means, he knew the transaction with good, which is aware that selling means *saalib* (deprive of possession on goods) and buy is *jaalib* (get ownership on goods). Can also distinguish between *Ghaban Al-Yasiir* (in the price of the price of light that is common) with *al-ghaban al-faahisy* (price differences that severe). So that unauthorized depute to the crazy and child *mumayyiz* small. And the kid which have been *mumayyiz*, then according to the Hanafi scholars, legitimate to depute

something to him , whether he allowed to trade by himself or mahjuur (onfined to spend his own treasure)

The requirements understanding is established because vice occupying a position *muwakkil* in conveyed his intention, so that a person who is capable of conveying vice have to mean. And, the ability to convey mean this not can be achieved except by the presence of the nature of understanding and *mumayyiz*. It is as practiced by ibnu ummi salamah when child marrying minister his mother to the prophet Muhammad Saw.

1.4 Requirements of Object that representating (*Muwakkal Fiih*)

Muwakkal fiih not things that the ownership open to the public, without the ownership limits. Because the person should not be mandating to others to look for wood in the forest, search of pasture in the open, take the water in public places, goods and dig a mine, such as copper, tin and precious metals. If there were representatives in these things, then what is produced is owned by vice, while *muwakkil* not getting anything.

This requirement is according to Mazhab Hanafi Scholar. According to *jumhur ulama* and it is also the opinion that stronger than Mazhab Syafi'i allowed to representatives in things over .And the result is divided between them in accordance with the each wages, without any distinction, because each get all kinds of benefits. Their reasons this is because it has something that was originally owned by general is one for the occurrence of ownership, so that it as trading, then legitimate representatives in it .

1.5 Things that May Be Delegated Responsibility and That Should Not Be Represented

The *fuqaha* have different views in some respects that may be represented. This makes we need to divide the discussion of things that may be into two parts.

First, representatives of the rights of Allah, which is all “had” punishment in the opinion of the Hanafi scholars, and according to other scholars is all *hudud* punishment besides *had qadzif*. *Second*, representatives of the rights of a slave, the representative of Allah's rights and representation in the implementation of *hudud*.

Al-Wakalah Implementation in Banking

Scheme of *Al-Wakalah*³⁴

Image 2.2 Scheme of *Wakalah*



³⁴ Muhammad Syafi'i Antonio. *Bank Syariah dari Teori ke Praktik*. (Jakarta:Gema Insani, 2001). P. 123.

3. Murabahah Bil wakalah on Concept of Regulation of Bank Indonesia

Bank Indonesia has set the vision and mission of syariah banking and strategic launched to reach the goal development objectively as policy paradigm and can be applied consistently. That's are (a) market driven, increasing by market needs; (b) fair treatment, Build a healthy industrial competition based on the characteristics of syariah banking and not give special treatment based on argument infant industry, (c) Gradual and sustainable approach, priority and development focus based on situation and condition also Conducted gradually and sustainable, (d) comply to sharia principle, The industry and the development of infrastructures in accordance with the syariah principle.³⁵

In order to support the development of sharia banking and its performance, Bank Indonesia has made a variety of legal policy which set the course of sharia banking activities. But to achieve a healthy operational activities, sharia banking still need frameworks and devices of regulations that are in accordance with the characteristics of operating. In early of development, rule activities and Supervision sharia banking institution still use the framework of regulation and supervision banking system conventional, although some instruments arrangement has begins to develop such as licensing for the establishment of banks and the opening of the office, an instrument interbank financial markets, a connecting device to the monetary authority (*sertifikat wadiah Bank Indonesia* and *giro wajib minimum*); and the payment system (sharia business unit obligate to have an account in Bank Indonesia). The completeness of

³⁵ Zainuddin Ali, *Hukum Perbankan Syariah*, (Jakarta:Sinar Grafika,2010), p.130.

an regulation instrument and supervision will make impact that in the syariah banking cannot optimally operate yet.³⁶

But as efforts to overcome challenges , bank of indonesia as the holder of banking authority , has done the preparation of an instrument of syariah banking regulation in its own. In addition, setting of an instrument can be manifested in the form of the act of sharia banking , also can be manifested in the form of decisions and letter of certain regulations issued by Bank Indonesia. But in principle the concept of rule of Bank Indonesia under development-oriented efforts to maintain the stability of the banking system and ensure compliance to the principles of Islamic Sharia. These are the following of some legal products issued by Bank Indonesia, related to regulation instrument of sharia banking activity.

decrees and regulations of bank indonesia in the field of sharia banking
Surat keputusan Direksi Bank Indonesia: No. 32/33/KEP/DIR tentang Bank Umum, khususnya Bab XI mengenai Perubahan Kegiatan Usaha dan Pembukaan Kantor Cabang Syariah
Surat keputusan Direksi Bank Indonesia: No.32/34/KEP/DIR tentang Bank Umum Berdasarkan Prinsip Syariah
Surat keputusan Direksi Bank Indonesia: No. 32/36/KEP/DIR tentang Bank Perkreditan Rakyat Berdasarkan Prinsip Syariah
Peraturan Bank Indonesia: No. 2/7/PBI/2000 tentang Giro Wajib Minimum (GWM) Dalam Rupiah Dan Valuta Asing Bagi Bank Umum Yang melakukan kegiatan Usaha Berdasarkan Prinsip Syariah
Peraturan Bank Indonesia: No. 2/8/PBI/2000 tentang Pasar Uang Antar Bank Berdasarkan Prinsip Syariah
Peraturan Bank Indonesia: No. 2/9/PBI/2000 tentang sertifikat wadiah bank indonesia (SWBI)
Peraturan Bank Indonesia: No. 6/17/PBI/2004 tentang Bank Perkreditan Rakyat Berdasarkan Prinsip Syariah
Peraturan Bank Indonesia: No. 6/24/PBI/2004 tentang Bank Umum yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah
Peraturan Bank Indonesia: No. 7/35/PBI/2005 tentang perubahan atas peraturan Bank Indonesia Nomor: 6/24/PBI/2004 tentang bank umum yang melaksanakan

³⁶ Burhanuddin Susanto, *Hukum Perbankan Syariah di Indonesia*, (Yogyakarta: UII Press, 2008), p.65.

kegiatan usaha berdasarkan prinsip syariah
Peraturan Bank Indonesia: No. 7/46/PBI/2005 tentang Akad Penghimpunan Dana Bagi Bank yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah
Peraturan Bank Indonesia: No. 7/47/PBI/2005 tentang Transparasi Kondisi Keuangan Bank Perkreditan Rakyat Syariah
Peraturan Bank Indonesia: No. 7/13/PBI/2005 tentang Kewajiban Penyediaan Modal Minimum Bank Umum Berdasarkan Prinsip Syariah
Peraturan Bank Indonesia: No. 8/3/PBI/2006 tentang perubahan kegiatan usaha bank umum konvensional menjadi bank umum yang melaksanakan kegiatan usaha berdasarkan prinsip syariah dan pembukaan kantor bank yang melaksanakan kegiatan usaha berdasarkan prinsip oleh bank umum konvensional.
Peraturan Bank Indonesia: No. 8/4/PBI/2006 tentang pelaksanaan good corporate governance bagi bank umum
Peraturan Bank Indonesia: No. 8/5/PBI/2006 tentang mediasi perbankan
Peraturan Bank Indonesia: No. 8/7/PBI/2006 tentang perubahan atas peraturan Bank Indonesia No.7/13/PBI/2005 tentang kewajiban penyediaan modal minimum bank umum berdasarkan prinsip syariah.
Peraturan Bank Indonesia: No. 8/21/PBI/2006 tentang penilaian kualitas aktiva bank umum yang melaksanakan kegiatan usaha berdasarkan prinsip syariah
Peraturan Bank Indonesia: No. 8/22/PBI/2006 tentang kewajiban penyediaan modal minimum Bank Perkreditan Rakyat berdasarkan prinsip syariah
Peraturan Bank Indonesia: No.8/23/PBI/2006 tentang perubahan atas Peraturan Bank Indonesia No. 6/21/PBI/2004 tentang giro wajib minimum dalam rupiah dan valuta asing bank umum yang melaksanakan kegiatan usaha berdasarkan prinsip syariah.
Peraturan Bank Indonesia: No.8/24/PBI/2006 tentang penilaian kualitas aktiva Bank Perkreditan Rakyat berdasarkan prinsip syariah
Peraturan Bank Indonesia: 8/5/PBI/2006 tentang perubahan atas Peraturan Bank Indonesia No. 6/17/PBI/2004 tentang bank perkreditan rakyat berdasarkan prinsip syariah
Peraturan Bank Indonesia: No.9/1/PBI/2007 tentang sistem penilaian tingkat kesehatan bank umum berdasarkan prinsip syariah
Peraturan Bank Indonesia: No. 9/5/PBI/2007 tentang pasar uang Antar bank berdasarkan prinsip syariah
Peraturan Bank Indonesia: No. 9/7/PBI/2007 tentang perubahan atas Peraturan Bank Indonesia No. 8/3/PBI/2006 tentang perubahan kegiatan usaha bank umum konvensional menjadi bank umum yang melaksanakan kegiatan usaha berdasarkan prinsip syariah dan pembukaan kantor bank yang melaksanakan kegiatan usaha berdasarkan prinsip oleh bank umum konvensional.

To strengthen authority as central banks focused on the financial system in the republic of Indonesia, Bank Indonesia should cooperate with DSN-MUI

which having authority of sharia law. The form of cooperation between bank indonesia with dsn-mui be pursued by *Memorandum of Understanding* or MOU To run the function of guidance and supervision to syariah banking. With the existence of this cooperation , mean the existence of DSN-MUI be very important in the development of the economic system and sharia banking in this country.³⁷

Regulation of Bank indonesia itself in line with *Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia* (DSN-MUI), Which the fatwa had an important role in efforts to product development of syariah banking law, position of fatwa DSN-MUI Occupying a strategic position that are for economic development and syariah financial institutions. In the development of economic and syariah banking referring to the legal system that build on the qur'an and hadist whose existence acts as a guideline main for the majority of muslims in particular and other people in general.³⁸ Fatwa DSN-MUI That deals with the development of institutions are economically and syariah banking be issued under consideration of *Badan Pelaksanaan Harian (BPH)* who is in charge of the science of syariah banking and economic. By the presence of the consideration of such expert, then a fatwa was issued by DSN-MUI has the authority and strength for scientific business activities syariah economic. Because of that fatwa for has binding power, need to formally adopted before and ratified in the form of legislation.

In this research, researcher refer to the Regulation of Bank Indonesia article 9 point d, No. 7/46/PBI/2005 about "*Akad Penghimpunan dan*

³⁷ Susanto, *Hukum Perbankan Syariah di Indonesia*,... p.78.

³⁸ Susanto, *Hukum Perbankan Syariah di Indonesia*,... p.76.

Penyelesaian Dana Bagi Bank yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah” mentioned that “Bank represents to the customers (*wakalah*) to purchase the goods, and the *Murabahah* Agreement must be done after the goods in principle be 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.

There is no detailed regulation that regulates *murabahah bil wakalah* financing, Both in Bank Indonesia regulation as well as in Fatwa DSN-MUI, just set up for each of the separate regulations of the contract regarding the *Murabahah*, and its own setting of *Wakalah*. *Murabahah* according to DSN-MUI NO: 04/DSN-MUI/IV/2000 that is selling an item with purchase price confirms to the buyer and the buyer pay more prices as profit, meanwhile *wakalah* according to DSN-MUI NO: 10/DSN-MUI/IV/2000 that is Moving the right or giving mandate to other party on anything that can be representation (allowed in Islam).