

CHAPTER IV

FINDING AND DISCUSSION

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

profile BRI syariah is generally as follow:

1. History

Bank BRI Syariah Starting from the acquisition of Bank Jasa Arta by Bank Rakyat Indonesia, on December 19, 2007 and then followed with the acquisition of a license from Bank Indonesia to change the business activities of Bank Jasa Arta from conventional commercial banks into commercial banks running the business based on sharia principles on October 16 2008, it gives birth to general Islamic Bank, named PT. Bank BRI Syariah (later called by the name BRISyariah) on 17 November 2008. (source).¹ BRI Syariah name was chosen to illustrate the direct relationship with Bank. Bank Rakyat Indonesia (Persero) Tbk, hereinafter called the Bank Rakyat Indonesia, which is one biggest bank in Indonesia. BRISyariah is a subsidiary of Bank Rakyat Indonesia, which will serve the banking social needs Indonesia by using principles of sharia.

The presence of PT. Bank BRI Syariah in the middle of the national banking industry is reinforced by the meaning of the company logo. The logo

¹ "About BRI Syariah" <http://www.brisyariah.co.id/?q=sejarah>, access at 17th of January, 2015. 20.30 a.m.

describe desires and demands of society to a modern bank as level as PT. Bank BRISyariah are able to serve the public in modern life. The combination of colors used is derived from the blue and white as a common thread with the brand PT. Bank Rakyat Indonesia (Persero) Tbk

The activity of PT. Bank BRISyariah more strength On December 19, 2008, because on that time had signed the deed of separation sharia business unit. The signing of the deed of separation had been made by Bp. Sofyan Basir as Director of Bank Rakyat Indonesia and Bp. Rahardjo Ventje BRISyariah as Managing Director, as the deed of separation Avg. 27 dated December 19, 2008 was made before a notary Fathiah Helmi SH in Jakarta. Consolidation of business units of Bank Rakyat Indonesia Sharia into BRI Syariah became effective on January 1, 2009.

Nowadays PT. Bank BRI Syariah become the third biggest Islamic banks based on assets. PT. BRISyariah Bank grew rapidly both in terms of assets, the amount of financing and the acquisition of third party funds. By focusing on the lower middle segment, PT. BRISyariah Bank targeting to be the leading modern retail bank with a wide range of banking products and services.

In accordance with the vision, this time PT. Bank BRISyariah pioneering synergy with PT. Bank Rakyat Indonesia (Persero) Tbk., by leveraging network PT. Bank Rakyat Indonesia (Persero) Tbk., As the Office of Sharia Services in developing a business that focuses on community fund raising activities and consumer activities based on Sharia principles.

2. Vision and Mision

Vision and mission of BRI syariah are:²

1) Vision

Being a leading modern retail bank with a range of financial services according to the needs of customers with the easiest to reach a more meaningful life.

2) Mision

- a. Understanding the diversity of individuals and accommodate the a variety of financial needs of customers.
- b. Provide products and services that promote ethics in accordance with the principles of sharia.
- c. providing convenient access through a variety of facilities whenever and wherever.
- d. Allows each people to improve the quality of life and bring peace of mind.

3. Financing Product of BRI Syariah

a. Pledged of Sharia (*Gadai syariah*)

Gadai BRISyariah iB To obtain funds cash in terms of meet the needs of urgent or funds for the purpose of business capital with fast process, easy, safe and accordance to syariah. With facilities:³

² "About BRI Syariah" <http://www.brisyariah.co.id/?q=visi-misi>, access at 17th January, 2015, 20.35 a.m.

- 1) a kind of gold that can be pawned: jewelry or gold bullion (lm or local) .
(LM or local).
- 2) The value of loans 90% (percent)of the value of goods.
- 3) Lightweight and affordable administrative costs based on the weight of gold.
- 4) Save & maintenance costs per 10 daily paid during repayment of the loan.
- 5) The maximum loan period of 120 days and can be extended 2 times
- 6) Flexibility of repayment in accordance ability.
- 7) Can be redeemed before maturity without penalty fee.
- 8) Secure storage and insurance sharia.
- 9) Got Certificate Sharia Pawn (SGS) as evidence Pawn.

In terms of mortgage financing (*gadai syariah*) sharia which is yaitu,

- 1) Submit identity card
- 2) Open saving account BRISyariah iB (if still not having yet).

Tabel 4.1 Administration Payment of *Gadai Syariah*

No	Gold per Gram	Admin Cost
1	< 50 gr	Rp 20,000
2	≤50 gr - < 100 gr	Rp 40,000
3	≤100 gr - < 250 gr	Rp 75,000
4	≤250 gr	Rp 100,000

b. *KKB BRI Syariah iB*

^{3a}About BRI Syariah <http://www.brisyariah.co.id/?q=gadai-brisyariah-ib>, access at 17th January, 2015, 20.39 a.m.

1.1 Benefit Description of KKB BRI iB Syariah:

- 1) Trade financing scheme is (*Murabahah*). Sale and Purchase contract goods to declare the acquisition cost and profit (margin) as agreed by the Bank and the Customer (fixed margin).
- 2) Minimum time of period is five years.
- 3) Installment fixed and ease during the period.
- 4) Free penalty for repayment before maturity.

1.2 Purpose of KKB BRI Syariah iB:

- 1) Purchase of new car.
- 2) Purchase used car.
- 3) Take Over/ *KKB* from other institution.

1.3 general requirements and provision of debtor

- 1) Indonesia Citizens.
- 2) Permanent employees with at least 2 years work experience.
- 3) Professionals with at least 2 years practical experience.
- 4) Professional The minimum age during the financing granted is 21 years and maximum age of retirement for employees or 65 years for professional.
- 5) Not included in the list of Financing Problem.
- 6) Meet the requirements as a Life Insurance policy holders.
- 7) Have or willing to open a savings account Bank BRI Syariah..

1.4 Customer Requirements Document Employees with fixed income

- 1) Identity card.

- 2) Family Card and Marriage Sertificate.
- 3) Last salary slip or Certificate of Salary.
- 4) The current account / savings last 3 months.
- 5) Private *NPWP*.

1.5 Document Requirements for Professional

- 1) Professional.
- 2) Identity card.
- 3) Family card and marriage sertificate.
- 4) The current account / saving last 3 months.
- 5) A valid lisencc to practice.
- 6) Private *NPWP* for payment up to Rp.50 million.

1.6 Fitur, payment Plafon:

- 1) Minimum Rp.25.000.000,-
- 2) Maximum Rp.1.000.000.000,-

1.7 Bank Finance

- 1) Car purchasing
 - a. New, maximum 80% from price On The Road which out by dealer.
 - b. Have used, maximum 80% from the fair market value (determined appraiser bank guarantee).
- 2) Take Over of *KKB*

100% from Outstanding another financial institution and / or 80% from the fair market value of the specified appraiser bank guarantee (whichever is lowest).

1.8 Period of Time

1) Purchasing of New Car :

- a. Minimum 1 year.
- b. Maximum 5 years.

2) Purchasing of used car.

- a. Minimum 1 year.
- b. Maximum 5 years.
- c. Conditions vehicle age at maturity is 8 years from the month of *BPKB* issue .

3) Take Over

Minimum 1 year, and maximum 5 years, Conditions vehicle age at maturity is 8 years from the month of *BPKB* issue.

c . Customer must open a Savings Account or Giro in BRI Syariah.

- 1) Allowable combined income with a spouse (husband / wife).
- 2) There is a guarantee can be: Gold, deposits, car / motorcycle with reg, or certified building land, *SHM* / *HGB*.
- 3) Accelerated repayment installment runs allowed after more from half the period of financing period.

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 well, 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”.*⁴

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 contract⁵ 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;

⁴ Bobby Hendrik A., *interview* (3th of November, 2014)

⁵ *Hybrid Contract* or *Multiple Contract*, is two contracts in one transaction.

“BRI Syariah cabang Genteng banyuwangi memberikan kuasa sepenuhnya kepada nasabah untuk pembelian barang kebutuhan, bahan 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*).⁶ 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.

In the begining, marketing agen of BRI Syariah directly prospect to the field, offering this financing to the people as candidates of customer or debtor, marketing agen affering for the capital, invest, and consumptive. For invest itself tend to business capital. Not only once for marketing parties come and offering

⁶ Boby Hendrik A., wawancara (Banyuwangi, 15 Desember 2014).

this financing, need a maintenance that the marketing agent comes to the candidate of customer to get a result that the customer join it or not.

“di follow up oleh pihak marketing, kemudian ketika butuh beberapa calon nasabah langsung menghubungi pihak marketing bank, kemudian dicari berapa kebutuhan yang dibutuhkan oleh nasabah-nasabah tersebut untuk modal kerja ataupun investasi.”

As described previously the object of goods will be purchased by the customer some of which are for working capital, investment, and for the consumer. These three things if for investment and working capital the BRI Syariah could facilitate 100%, however this investment still there is a relation with customer business itself. For example, customer have a groceries business, then customer want to buy a private house, it means that's not include BRI Syariah Invest, because groceries there is no relation with a private house, (include in KPR segmen). But for consumptive bank only facilitate it about 50%, based on this interview quotation as follow;

“nasabah berkeinginan membeli ruko untuk pengembangan usahanya itu boleh, konsumtif di fasilitasi 50% dari total pembiayaannya” jelasnya.

After getting a number of requests, then the files required for the process of analyzing this *murabahah* financing approved in advance by the parties of marketing agent of BRI Syariah. Then as first, bank check a primary goods such as ID cards, family cards, Marriage Certificate, a certificate as collateral, and other completeness. Neither NPWP or mutations account, also assets that will be pledged or mortgaged. after that, it is bring to the office by the bank marketing agent, and check it for knowing the customer have problem or bounding agreement with other bank or not. Not all customers approved, only customers who are

considered capable of it, because the desire BRI Syariah to issue a financing is not to burden customers in the future. This is suitable with Mr. Bobby explanation;

“kalau pembiayaan ini kedepannya menjadi berat, maka diusulkan pembiayaan yg lebih memudahkan nasabah atau sesuai kemampuan nasabah.”

Properties or goods that will be purchased include to the list of financing plan (DRP), in *DRP* goods already mentioned, Goods that will be purchased for example for basic needs such business of groceries, rice snack and other goods which allowable, for a cigarette or goods that banned by islamic law, are not allowed.

When a customer worth from bank analysis, that's as analysis have ability to pay (terms of collateral), the character is not a concern, then approved the customer directly come to the BRI Syariah office to perform *murabaha bil wakalah* contract and signed an agreement perform the contract. But before signing, the bank explained detail the sale price or the purchase price, profit (margin) that the bank will take, and risks. As explanation;

“sebelumnya kita jelaskan detail harga jual/harga beli, keuntungan/margin yg kita ambil berapa, selama tenor waktu 3 tahun itu berapa, jumlahnya semua tertera, termasuk jangka waktu juga. kemudian agunanya disebutkan, akad secara notariil, Jadi akad jual beli sudah jelas, kemudian dibacakan resiko dan daftar rencana pembiayaanya dibacakan dengan jelas sesuai dengan interview di awal”

After describing about detail price, margin and also risks, Then holding the contract be notarized (loans above 50 million) during agreed, after explaining some of the provisions and others that have been mentioned above, customers

signed two agreements *murabahah* and *wakalah* instantly during at the beginning of agreement , from this basis it will be credited amount of money. As this explanation;

“pada saat bersepakat setelah menjelaskan beberapa ketentuan dan lain-lain yg disebutkan tadi, nasabah menandatangani dua perjanjian murabahah dan wakalah seketika itu. Dari dasar inilah, maka nanti di kreditkan uang sejumlah berapa, dimasukkan lah uangnya, setelah uang cair dia nerima uang tersebut dia belanja, kita minta buktinya. Bisa berupa kwitansi, nota manual, entah prin out bukti transfer tergantung dari jumlahnya.”

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”

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.

From explanation above known that implementation of *murabahah bil wakalah* in BRI Syariah Unit Genteng Banyuwangi is Bank give fully representation to the customers to purchase of goods by way of funds dropping at the first, then receipt of purchase of goods submitted to the bank as evidence that the purchase has been done. And customers instantly signed two agreements (*murabahah* and *wakalah*) in first agreement (*wakalah*).⁷

But if referring to Regulation of Bank Indonesia article 9 point d, No. 7/46/PBI/2005 about “*Akad Penghimpunan dan 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 belonging to the bank” In next part explanation of this regulation mentioned that *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.

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 look like do not want to be bothered with some steps which felt to be longer to implement separating *wakalah* and *murabahah* financing.

⁷ Bobby Hendrik A., *wawancara* (Banyuwangi, 15 Desember 2014).

Other than that the concept of *murabahah bil wakalah* in the financing BRI unit Genteng Banyuwangi is also contrary to the *murabahah*, Islamic banking system. where the subject of the sale (goods or commodities) should have the seller (bank) and owned by him, and the seller (bank) should be able to send it to the buyer (customer).⁸

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.

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 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.

نهي رسول الله عن صفقتين ف صفقة واحدة

⁸ Abdullah Saeed, *Bank Islam dan Bunga (Studi Kritis Larangan Riba dan Interpretasi Kontemporer)*, Yogyakarta: Pustaka Pelajar, 2004, p.139.

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

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.

But according to the Hanafi and Maliki scholars, *wakalah* in general is legitimate, because *wakalah* should apply to all actions whose authority is owned by *muwakkil* and all the things that can be represented, such as purchases of property and so on.¹⁰

Then if studied further, that the rules in this regulation or DSN-MUI none financing detailed regulate of *murabahah bil wakalah*, only each from the contract that is separate regulation of *Murabahah*, and a separate regulation of *Wakalah*. *Murabahah* according DSN-MUI No: 04/DSN-MUI/IV/2000 is selling an item confirms the purchase price to the buyer and the buyer paid the price as profit, whereas according to the DSN-MUI *wakalah* NO: 10/DSN-MUI/IV/2000 that the delegation by one party to another in matters that may be represented.

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

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

¹⁰ Az-Zuhaili, *Fiqh Islam* ...,p.593.

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*)