

THE CLAUSE OF THE MURABAHAH FINANCING AGREEMENT IN SHARIA BANKING

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Abstrak. *This study describes the standard clauses in the murabahah financing agreement. This study uses a normative juridical research method. The data was collected using literature study techniques on primary, secondary, and tertiary legal materials. The collected legal material is then analyzed using qualitative data analysis methods, which will conclude the research's object. The results show that there are 17 standard clauses and a prohibition of inclusion of the exclusion clause in the murabahah financing agreement. Therefore, it is recommended that the Bank and the Customer apply the standard clauses in the murabahah financing agreement. In this case, the Bank and the Customer get guarantees, comfort, and legal protection during the murabahah financing period.*

Keywords:
*Agreement;
Clause;
Murabahah Financing;
Sharia Banking.*

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INTRODUCTION

In the context of Islamic law, the Qur'an and Hadith function as a fundamental foundation (*al-ushul*), which contains a principle.¹ In this case, it becomes a reference in agreeing with sharia banking. Article 21 of Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2008 on the Compilation of Sharia Economic Law (hereinafter referred to as the Compilation of Sharia Economic Law), regulates that the agreement is implemented based on the principles:

- a. Voluntary (*ikhtiyari*): each agreement is made at the parties' will, avoiding being forced due to pressure from one party or another;
- b. Trust or keep promises: each agreement must be carried out by the parties in accordance with the agreement determined by the person concerned and at the same time, avoid breaches of promise;
- c. Prudence (*ikhtiyati*): each agreement is carried out with careful consideration and carried out precisely and carefully;

¹Asyari, M. B. (2013). Fiqh Ikhtilâf Perspektif Hasan Al-Bannâ. *Al-Ihkam: Jurnal Hukum dan Pranata Sosial*, 8(2), p. 209.

- d. Unchangeable (*luzum*): each agreement is made with a clear purpose and careful calculation to avoid the practice of speculation (*maisir*);
- e. Mutual benefit: each agreement is made to fulfill the interests of the parties to prevent manipulation and harm to one of the parties;
- f. Equality (*taswiyah*): the parties to reach an agreement has an equal position and have balanced rights and obligations;
- g. Transparency: every agreement is carried out with the responsibility of the parties openly;
- h. Capability: each agreement is carried out with the capabilities of the parties so that it does not become an excessive burden for the person concerned;
- i. Ease (*taisir*): each agreement is carried out by giving other convenience to each party to be able to implement it in accordance with the agreement;
- j. Good faith: the agreement is made in order to uphold the benefit and does not contain elements of traps and other evil deeds;
- k. Halal causes: not against the law, not prohibited by law, and not unlawful;
- l. Freedom of contract (*al-hurriyah*);
- m. Written (*al-kitabah*).

The principles mentioned above are interrelated with one another. In addition to the principles, several elements are prohibited from the practice of sharia banking which also become its characteristics, namely the prohibition of *maysir*, *gharar*, and usury.² On the other hand, the agreement that each party has agreed upon will fulfill the rights and obligations between them. Thus, preparing a sharia banking agreement must contain various principles of Islamic law and heed various prohibitions so that the rights and obligations of the parties are fulfilled perfectly.³ Therefore, we need a standard for implementing an agreement. This provision will provide minimum guidelines regarding the clauses that must be contained in the agreement, including the Murabahah Financing agreement, which will be agreed upon by the Bank and the Customer. Generally, the Fatwa of the National Sharia Board Number 04/DSN-MUI/IV/2000 on Murabahah includes provisions for Sharia Banks and Customers, collateral, debt, delays in payment, and bankruptcy in murabahah.

Banks and customers can still agree with the principle of freedom of agreement (*al-hurriyah*). However, the parties must continue to comply with the main provisions to ensure the agreement is based on sharia principles, positive law, and consumer protection. The standard of the agreement that the Bank has prepared is a proposal (*ardh al-syuruth*) and is not a requirement that must be obeyed by other parties (*fardh al-syuruth*). The Bank must always provide the opportunity for deliberation with potential customers regarding the standard clauses of the Murabahah agreement,

²Rudiansyah, R. (2020). Telaah Gharar, Riba, dan Maisir dalam Perspektif Transaksi Ekonomi Islam. *Al-Huquq: Journal of Indonesian Islamic Economic Law*, 2(1), p. 99.

³Khasanah, K. (2018). Problematika Hukum Tabungan dengan Akad Mudharabah di Perbankan Syariah. *Jurnal Masharif al-Syariah: Jurnal Ekonomi dan Perbankan Syariah*, 3(1), p. 6.

which are considered burdensome to potential customers. The agreement is divided into three categories regulated in Article 27 of the Compilation of Sharia Economic Law. Article 28 of the Compilation of Sharia Economic Law regulates that:

- (1) A valid (*shahih*) agreement is an agreement that has fulfilled its pillars and conditions.
- (2) A voidable (*fashid*) agreement is an agreement that has fulfilled its pillars and conditions, but other things damage the agreement because of considerations of benefit.
- (3) A void (*bathal*) contract is an agreement that lacks pillars and or conditions.

Article 22 of the Compilation of Sharia Economic Law regulates that the pillars of the agreement consist of:

- a. the parties to the agreement;
- b. agreement object;
- c. the main purpose of the agreement; and
- d. deal.

Article 1320 of Colonial Regulations, Staatsblad Number 23 of 1847 on the *Burgerlijk Wetboek voor Indonesie*/the Civil Code (hereinafter referred to as the Civil Code), regulates that in order to be valid, an agreement must satisfy the following four conditions:

1. There must be consent of the individuals who are bound thereby;
2. There must be capacity to enter into an obligation;
3. There must be a specific subject matter;
4. There must be a permitted cause.

From the above provisions, it can be understood that the pillars of the Murabahah agreement include the existence of a seller (*bai*), the buyer (*musytari*), the object of sale and purchase (*mabi*), price (*tsaman*), and ijaab qabool. Meanwhile, the conditions for implementing the Murabahah agreement include subjective and objective conditions. The subjective requirement is the capacity of the legal subject, and the objective requirement is that the object of the agreement must be lawful (*amwal*).⁴ Legal subjects are divided into two, namely individuals and business entities. In contrast, Article 1 point 6 of the Compilation of Sharia Economic Law explains that:

“Muwalla is a person who is not yet capable of carrying out legal actions, or a business entity that is declared bankrupt (taflis) based on a court decision that has obtained permanent legal force.”

The object of the agreement must be lawful (*amwal*) is an agreement that does not contain elements of *maysir*, *gharar*, and usury. Article 29 section (1) of the Compilation of Sharia Economic Law regulates that:

⁴Sinaga, N. A. (2018). Peranan Asas-Asas Hukum Perjanjian dalam Mewujudkan Tujuan Perjanjian. *Binamulia Hukum*, 7(2), p. 112.

“A valid agreement as referred to in Article 27 point a is a contract that is agreed upon in the agreement, does not contain an element of mistake (ghaiath), is carried out under coercion (ikrah), deception (taghrir), and disguise (ghubn).”

Based on the description above, this study aims to describe the standard clauses in the murabahah financing agreement.

METHOD

This study uses a normative juridical research method to analyze legal problems by referring to and originating from legal norms.⁵ The types of data used are legal materials, including:

1. Primary legal materials include the Compilation of Sharia Economic Law, the Civil Code, Law No. 8 of 1999, Law No. 21 of 2008, Regulation of Bank Indonesia, Fatwa of the National Sharia Board, and other laws and regulations;
2. Secondary legal materials that explain primary legal include books, articles, and online materials that discuss murabahah financing; and
3. Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials. The tertiary legal material used by the author is the Big Indonesian Dictionary and related legal dictionaries.

The data was collected using literature study techniques on primary, secondary, and tertiary legal materials. The collected legal material is then analyzed using qualitative data analysis methods will then conclude the object of the research.⁶

RESULTS AND DISCUSSION

In connection with the above, the Financial Services Authority, through the Department of Sharia Banking, conducted a 2015 work program by compiling a standard review of Murabahah products. The program produced a standard book for Murabahah Sharia Banking products which aims to improve the service and quality of Murabahah financing as a sharia bank product.⁷ One standard description in the book is the standard murabahah agreement contract. The standard will provide minimum guidelines regarding the clauses that must be contained in the agreement. With the existence of this book, it is hoped that it will provide a guarantee of security and comfort in the context of consumer protection for sharia banking. The following is a description of the clauses in the standard murabahah agreement contract, including:⁸

⁵Diantha, I. M. P. (2017). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Kencana Prenada Media Group, p. 12.

⁶Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn), pp. 47-48.

⁷Waluyo, A. (2016). Kepatuhan Bank Syariah terhadap Fatwa Dewan Syariah Nasional Pasca Transformasi ke dalam Hukum Positif. *Inferensi: Jurnal Penelitian Sosial Keagamaan*, 10(2), p. 526.

⁸Utomo, S. B. (Ed.) (2016). *Standar Produk Perbankan Syariah Murabahah*. Jakarta: Financial Services Authority in Collaboration with the Department of Sharia Banking of the Republic of Indonesia, pp. 91-111.

A. Clause of Identity and Financing Period

The identity of the parties and the period in a Murabahah agreement must be stated clearly and in detail.⁹ Identity includes information on the citizen ID card as well as the legal subject status of the parties. Legal subjects consist of the Customer as the Debtor and the Bank as the Creditor. Meanwhile, the clarity of the period includes the start date and the end date of the Customer's payment obligations in paying off the murabahah financing. The Customer can extend the financing period by making a written request to the Bank. The extension becomes valid if agreed upon by both parties. Therefore, the clarity of this clause is essential to provide legal protection to both parties during the financing period.

B. Clause of Object of Murabahah Financing

The Bank and the Customer must clearly and in detail mention the specifications of the murabahah object in the agreement. In this case, the specification of the object of sale and purchase, production materials, property, heavy equipment, and other objects (tangible assets). In addition, it also covers all kinds of rights (intangible assets) that can become objects of property rights, as regulated in Article 58 of the Compilation of Sharia Economic Law and Article 499 of the Civil Code. Banks can gradually disburse funds based on the procurement progress of the murabahah object supplier. The criteria for the murabahah object are as follows:

1. The object must exist and be owned in sharia principle by the Bank as the seller.
2. The object can be assessed, complies with sharia principles, and handover must occur as regulated in Article 76 of the Compilation of Sharia Economic Law.

Banks must also ensure that the process of handover murabahah objects to customers runs effectively. On the other hand, if the Customer finds or knows that the murabahah object is in a defective condition before signing the agreement, a right of choice (*khiyar al-ayb*) will arise.¹⁰ In this case, the Customer has the right to choose to continue or cancel the agreement process. However, if the Customer knows the object's condition and continues to sign the agreement, then *mutatis mutandis*, the right to choose will automatically expire. Therefore, the parties should add a clause related to the defect of a murabahah object before signing the agreement. In this case, if the murabahah object is defective without the knowledge of both parties, then the Customer still has the right of choice (*khiyar al-ayb*).

⁹Pribadi, R. W. (2019). Pembiayaan Hunian Syariah Kongsi Akad Musyarakah Mutanaqisah Perspektif Undang-Undang No. 21 Tahun 2008 tentang Perbankan Syariah. *Mutawasith: Jurnal Hukum Islam*, 2(1), pp. 43-44.

¹⁰Utsmani, M. M. (2017). Credit Card Perspektif Hukum Islam. *Wadiah: Jurnal Perbankan Syariah*, 1(2), pp. 13-14.

C. Clause of Customer as Bank's Representative

Banks are allowed to provide authorization to customers with the wakalah agreement. However, as the Bank's representative with the wakalah agreement, the Customer does not act for and on behalf of the Bank as a legal subject.¹¹ In this case, the Customer is not the Bank's representative to take legal action. The authorization is intended to make the Customer act as the Bank's representative to purchase the murabahah object. In this case, when purchasing the murabahah object, the Customer remains a legal subject acting for and on his behalf. The Customer must take the necessary steps to protect the rights and interests of the Bank. In addition, the Customer may not do things contrary to his rights and obligations based on the agreement. Therefore, the Customer does not have the right or authority, either expressly or impliedly, to:

1. Make or provide debt guarantees, statements, or warranties in connection with the purchase of murabahah objects on behalf of the Bank;
2. Purchasing other objects on behalf of the Bank other than the murabahah object, explicitly stated in the agreement; and
3. Request, claim, or obtain reimbursement of costs relating to insurance, wages, warehousing, shipping, or other matters. In this case, the Customer only gets the cost according to the purchase price of the murabahah object, explicitly stated in the agreement.

In contrast, the Customer must ensure that the murabahah object has complied with the specifications, conditions, and prices approved by the Bank. As the Bank's representative, the Customer must check and ensure that the object purchased and received is under the murabahah object contained in the agreement. In addition, the Customer is also responsible for purchasing and delivering the murabahah object directly from the supplier based on the delivery date stated in the transaction notification that the Bank has approved. The ownership status of the murabahah object is transferred to the Bank after the object is handed over from the supplier to the Customer under the procedures that have been determined and further agreed upon in the contract. The Customer bears all risks concerning the theft, loss, damage, and destruction of the murabahah object unless caused by force majeure matters. In this case, from the date of delivery from the supplier to the Customer until the date on which the Bank receives the object from the Customer. Therefore, as long as the Customer has met all conditions for payment and there is no default on the financing agreement, payment of the purchase price will be made by the Bank to the Customer or the supplier.

¹¹Maulana, I. (2020). Aplikasi Akad Wakalah dalam Letter of Credit Bank Syariah Mandiri. *Jurnal Asy-Syukriyyah*, 21(2), pp. 178-179.

D. Clause of Sale and Purchase Agreement

If the Bank has approved the application for murabahah financing, the Customer must send a complete notification of the transaction to the Bank. In addition, the Customer also attaches other documents required by the Bank to purchase a murabahah object. The Customer must complete the completeness of other documents based on the period determined by the Bank. Banks are required to check the preliminary requirements documents after receiving all the completeness of the Customer's application documents. After stating that all the application documents are complete, the Bank will negotiate with the supplier so that it has a basis for determining the purchase price of the murabahah object for the Customer. Furthermore, the Bank will buy the object from the supplier and resell it to the Customer based on the clause in the murabahah financing agreement.¹² Therefore, coinciding with the day and date the murabahah financing declaration is made, all risks related to the murabahah object will be transferred to the Customer.

E. Clause of Main Price and Margin

The price and currency used in murabahah financing must be clearly stated, mutually agreed upon, and stated in the agreement. If the Bank wishes to sell a murabahah object to the Customer using a different currency, the Bank must clearly and in detail the value of the currency used by the Bank when purchasing the object from the supplier.¹³ Customers are allowed to make installment payments or repayments in a currency different from the agreed currency. In this case, the Customer pays according to the spot exchange rate for the object payment in question.

Banks must also state the selling price of the financing object according to sharia principles. The selling price includes the purchase price and margin as the desired profit value by the Bank. The main price is calculated based on the purchase price of the murabahah object from the supplier minus the down payment given by the Customer. The Bank must notify the purchase price explicitly and honestly to the Customer and include it in the murabahah financing agreement. The purchase price is the main price plus other costs directly related to the procurement of the object. Direct costs include shipping costs, maintenance costs, and costs to increase the value or quality of the murabahah object. Indirect costs associated with murabahah transactions such as utility costs (electricity, water, telephone credit), employee salaries, overtime pay, and other similar matters should not be charged as a component of direct costs. Service costs integrated with assets to support the perfection of asset performance, such as installation costs, major spare

¹²Usanti, T. P. (2013). Akad Baku pada Pembiayaan Murabahah di Bank Syariah. *Perspektif: Kajian Masalah Hukum dan Pembangunan*, 18(1), p. 52.

¹³Fathoni, N. (2013). Konsep Jual Beli dalam Fatwa DSN-MUI. *Economica: Jurnal Ekonomi Islam*, 4(1), p. 76.

parts, and other similar things may be charged as a component of direct costs. All direct costs incurred after the approval of the murabahah financing agreement may not be added as a component of the purchase price of the murabahah object and should be borne by the Customer. The main price is also stated as the murabahah financing ceiling.

Meanwhile, the margin calculation can refer to the generally accepted rate of return on the financial market by considering the expected cost of funds, risk premium, and profit level. Margin is stated in nominal form or a certain percentage of the Bank's purchase price. The parties must agree upon the margin desired by the Bank, and the value may not change during the agreed term. Banks can provide a murabahah margin discount as long as it is not an obligation of the Bank as stated in the murabahah financing agreement.

F. Clause of Down Payment

Banks can request a down payment if both parties agree on this. In addition, the amount of the down payment is also determined based on the agreement of both parties. The provision of down payments is regulated in the Fatwa of the National Sharia Board Number 13/DSN-MUI/IX/2000 on Down Payment in Murabahah. Other general provisions related to down payments include:

1. If the Customer cancels the murabahah agreement, the Customer must provide compensation to Sharia Financial Institutions from the down payment.
2. If the amount of down payment is less than the loss, Sharia Financial Institutions may request additional payments from the Customer.
3. If the down payment amount exceeds the loss, Sharia Financial Institutions must return the excess to the Customer.

G. Clause of the Condition of Precedent

A clause of the condition of precedent is a clause that describes the initial condition of the Customer and the realization requirements applied by the Bank.¹⁴ Therefore, the Bank may regulate a clause related to the realization requirements that are not burdensome or oppressive to the prospective Customer. The realization requirements that need to be regulated by the Bank are related to the requirements for completeness of documents, business plans, and break-even points related to the Customer's business. The Bank has the right to determine the requirements and procedures for the realization of payments, including but not limited to the following:

1. Customer proof documents, letters or object details forms, ownership documents, and collateral binding;
2. The signing of the agreement and the collateral binding agreement;

¹⁴Ahmadi, S. (2016). Perjanjian Hudaibiyah sebagai Model Kepatuhan terhadap Perjanjian Internasional dalam Perspektif Islam. *Jurnal Hubungan Internasional*, 4(2), pp. 163-164.

3. Agreement to determine down payment as agreed and or to settle fees required by the Bank;
4. Has submitted to the Bank a Promissory Note to pay the Selling Price in full to the Bank;
5. Open or maintain a checking/savings account.

Meanwhile, the Bank is obliged to provide a receipt to the Customer. In this case, proof of each payment or document submitted by the Customer. In addition, the Bank must ensure that the Customer and or Guarantor are not included in the National Black List issued by Bank Indonesia.

H. Clause of Expenses

The Bank may charge the costs of implementing the agreement to the Customer. Therefore, the Customer is obliged to bear and pay for the following costs:

1. The administrative costs determined are based on the Bank's reference standard and must be paid when the agreement is signed. In this case, it is not included in murabahah financing.
2. Other costs arise from the implementation of the agreement. In this case, including but not limited to notary fees, insurance premiums, and guarantee binding fees. The Bank is obliged to convey this to the Customer. In this case, the Customer must agree on the fee before signing the murabahah financing agreement.
3. Tax costs incurred in the agreement process must be borne and paid by the Customer. However, the Customer is not responsible for paying the Bank's income tax due to the murabahah financing agreement.

The Customer only makes payments or repayments of financing to the Bank in connection with this agreement and other agreements related to this agreement. In this case, payment is without deductions, levies, duties, taxes, or other costs. However, the Customer must pay if the deduction is required under applicable laws and regulations. On the other hand, if the Customer is late in paying obligations from the predetermined installment schedule, the Bank may charge the Customer to pay a fine for the delay. Furthermore, if the Customer defaults, causing the Bank to involve legal advisory services to collect it. In this case, the Customer must pay all fees for legal advisory services, collection services, and other services as long as the Bank can be proven legally according to law. The Bank will allocate the funds it receives from fines for lateness or compensation funds from customers as social funds.¹⁵

¹⁵Sigit, P., *et al.* (2021). Implementasi Denda pada Akad Murabahah dalam Perspektif Ekonomi Syariah di BMT Purwakarta Amanah Sejahtera (PAS). *Eksisbank (Ekonomi Syariah dan Bisnis Perbankan)*, 5(1), p. 144.

I. Clause of Payment Mechanism

The Bank will appoint an account number and Bank office for settlement or payment of murabahah financing installments. If the Bank receives the payment after the Bank's business hours, the payment will be recorded on the next working day. If the murabahah financing payment is made using a foreign currency, then Customers are allowed to make installment payments in a different currency from the agreed currency. In this case, the Customer pays according to the spot exchange rate for the object payment in question. The Bank and the Customer agree to waive Article 1813, Article 1814, and Article 1816 of the Civil Code regarding debiting the Customer's account for payment of all obligations arising in connection with the murabahah financing agreement.

J. Clause of Collateral

Banks can ask for collateral from customers so that customers are severe and orderly in making murabahah financing payments. However, the Bank must explain to the Customer that the collateral is not mandatory in murabahah financing.

K. Clause of Customer Obligations

Each agreement always contains an affirmative that contains a Customer's promises to do certain things as long as the financing agreement is still valid. The promises are the obligations of the Customer, which include:

- a. Bind themselves to make payments in full, stages, and on time according to the agreed period.
- b. Using the murabahah financing facility under its intended use.
- c. Provide honest and open information regarding financial conditions.
- d. Permit representatives of the Bank to verify personal assets and or the business being carried out.

L. Clause of Prohibition

Each agreement always contains a prohibition that contains a Customer's promises not to do certain things or is a prohibition on the part of the Bank. The promises are prohibited for the Customer, which includes:

- a. Take actions that can cause losses or affect the Customer's ability to pay the murabahah financing installments.
- b. Disbanding a business and requesting to be declared bankrupt without written approval from the Bank.
- c. Guarantee themselves as guarantor for the debts of other parties.

M. Clause of Expedited Repayment

Expedited repayments are payments made by the Customer before the maturity of part or all of the murabahah financing. In this case, the payment must be under the applicable provisions and has been agreed by both parties. The Customer must give written notice to the Bank before making an expedited repayment, done on a working day. The written notification includes changes to the installment scheme to shorten the period or increase the number of installments for murabahah financing payments. The Customer must provide the documents the Bank requires when applying for expedited repayment financing. The administration fee or repayment discount will be calculated and mutually agreed upon when applying for expedited repayment financing. Expedited repayment or repayment of murabahah financing automatically terminates the Customer's payment obligations to the Bank.

N. Clause of Default

Default is the Customer's failure to fulfill his obligations to the Bank based on a mutually agreed agreement. These actions ultimately cause losses for the Bank because they do not get their rights from the Customer. Article 36 of the Compilation of Sharia Economic Law regulates that a party can be deemed to have defaulted, if due to their fault:

- a. Not doing as promised;
- b. Carry out what he promised but not as it should be;
- c. Did what he promised, but it was too late; or
- d. Doing something that, according to the agreement, should not be done.

Furthermore, compensation financing is regulated in the Fatwa of the National Sharia Board Number 43/DSN-MUI/VIII/2004 on Compensation (*Ta'widh*) contains instructions that if there is a default or negligence on the part of the Customer, the Bank is entitled to receive compensation under the following conditions:

1. Compensation may only be imposed on parties who intentionally or due to negligence do something that deviates from the agreement's provisions and cause harm to other parties.
2. The amount of compensation is by the value of the actual loss that must be experienced (fixed cost) in the transaction and not a potential loss due to an opportunity loss.
3. The amount of compensation must remain by the real loss, and the payment procedure depends on the parties' agreement.

O. Clause of Force Majeure

Force majeure is a condition where the Customer cannot pay the murabahah financing payment. In this case, an unexpected event occurs, or the event cannot be accounted for by the Customer, while the Customer is not in a state of bad faith. Furthermore, the Customer is required to make a written statement or notification to the Bank regarding the force majeure situation he has experienced. The Customer is also required to provide evidence of information from the Police/Authorized Agencies related to reporting the incident. Banks must stipulate attachments of evidence of statements, notifications, and statements from the Police/Authorized Agencies related to the incident. Banks need to regulate the resolution of problems that arise as a result of force majeure by deliberation to reach consensus without prejudice to the rights of the Bank as stipulated in the agreement. Therefore, the force majeure situation can be used as a reason for the exemption of compensation to the Customer due to not carrying out the payment obligations contained in the agreement. In addition, the force majeure clause prevents filing a dispute or conflict lawsuit if parties feel aggrieved by the incident.

P. Clause of Termination of Murabahah Agreement

Murabahah agreement financing is declared terminated when the parties have completed their rights and obligations, including:

1. The Customer has completed the entire obligation to pay for the financing of the murabahah object;
2. The Customer transfers the obligation to pay for the financing of the murabahah object to a third party through an agreement;
3. The Bank waives the right to receive payment for financing the murabahah object through the provision of discounted prices.
4. The Bank provides a discount on the financing margin to the Customer for the obligation to pay for the financing of the murabahah object.

Meanwhile, the murabahah agreement can be terminated if the following things occur:

1. The Bank decides not to continue the agreement after the Customer makes a down payment. In this case, the Customer does not follow up on the making of the murabahah financing agreement within a mutually determined time;
2. The Bank decides to terminate the agreement by using the right of choice;
3. Both parties agree to terminate the agreement based on a mutually agreed period;
4. One of the parties decides to terminate the agreement because one of the other parties is in default;
5. Both parties agreed to terminate the murabaha agreement.

Q. Clause of Dispute Resolution

If the Customer defaults, then the murabahah object must be returned to the Bank, and any payments made must be returned to the Customer. In this case, the murabahah agreement ends effectively since the Customer returns the murabahah object to the Bank under mutually agreed conditions. Arrangements regarding dispute resolution between the Bank and the Customer must prioritize the principle of deliberation to reach a consensus. If deliberation to reach a consensus is not reached, the Bank and the Customer can resolve the dispute in alternative ways by banking mediation by applicable laws and regulations. If the mediation mechanism has not been successful, then based on Article 20 section (2) of Regulation of Bank Indonesia Number 7/46/PBI/2005 on Funds Collection and Distribution Agreement for Banks Conducting Business Activities Based on Sharia Principles, regulates that:

“If the deliberation does not reach an agreement, then further settlement can be made through alternative dispute resolution or the Sharia Arbitration Agency.”

The execution of the sharia arbitration award will be determined through the Religious Courts. Therefore, the Bank and the Customer must agree on the authority to adjudicate through the Religious Courts if there is a dispute as based on Article 55 of Law of the Republic of Indonesia Number 21 of 2008 on Sharia Banking, which regulates that:

- (1) Dispute resolution of Sharia Banking is carried out by a court within the Religious Courts.
- (2) In the event that the parties have agreed on a dispute resolution other than as referred to in section (1), the dispute resolution shall be carried out by the agreement’s contents.
- (2) Dispute resolution as referred to in section (2) must not conflict with the Sharia Principles.

R. Prohibition of Inclusion of the Exclusion Clause

Banks are prohibited from including exclusion clauses. In this case, a clause in the agreement relieves or limits the liability of one of the parties in the event of a default. Meanwhile, according to laws and regulations, the Bank should bear this responsibility. Article 18 section (1) of Law of the Republic of Indonesia Number 8 of 1999 on Consumer Protection regulates that business actors offering goods and/or services intended for trading are prohibited from making or including standard clauses in every document and/or agreement if:

- a. declare the transfer of responsibility of business actors;
- b. declare that the business actor has the right to refuse to return the object purchased by the consumer;

- c. declare that business actors have the right to refuse to return the money paid for goods and or services purchased by consumers;
- d. declare the granting of authorizations from consumers to business actors either directly or indirectly to take all unilateral actions related to objects purchased by consumers in installments;
- e. regulates the matter of proving the loss of use of goods or the use of services purchased by consumers;
- f. give rights to business actors to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling services;
- g. declare the consumer's submission to regulations in the form of new rules, addendums, continuations, and or follow-up changes made unilaterally by business actors while the consumer is using the services he purchased;
- h. declare that the consumer authorizes business actors to impose encumbrance rights, pledge rights, or collateral rights to objects purchased by consumers in installments.

In addition to the clause above, the Bank is prohibited from establishing a clause included in the exclusion clause. For example, a clause that limits the Customer's actions in conducting legal relations with third parties in the context of business development, while this is not related to the murabahah agreement.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion above, it can be concluded that there are 17 standard clauses and a prohibition of inclusion of the exclusion clause in the murabahah financing agreement. Based on the description of these conclusions, it is recommended that the Bank and the Customer apply the standard clauses in the murabahah financing agreement. In this case, the Bank and the Customer get guarantees, comfort, and legal protection during the murabahah financing period.

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