

## Submission

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# LAW ENFORCEMENT ON SHARIA COMPLIANCE: A Case Study on the Murabahah Consumptive Financing Agreement of Bank A Syariah

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## ABSTRACT

Sharia compliance is the basic basis for assessing whether Islamic banks have enforced sharia law or not. Law enforcement by Islamic banking must reach the element that the bank has implemented the rules of muamalah related to the prohibition of usury, gharar, maysir and dzolim. The factual phenomenon is fraud in the murabahah consumptive financing contract by Bank A Syariah. This is important to study and analyze considering that law enforcement on sharia compliance in bank A Syariah on contract and financing instruments has an impact on customer and public trust. This research uses normative legal research methods, with a critical legal study approach. The results of the study show that law enforcement is not directly proportional to sharia compliance. There is still a "legal trick" (*Hilah*) in the *murabahah* consumptive financing contract made and signed by the Islamic bank and the customer. *Hilah* is part of the legalization of taking usury. Bank A Syariah business activities have not been maximally carried out in the real or productive sector. Productive sectors, such as livestock, fisheries, food crop agriculture, plantations, food and beverage processing industry, crafts, trade, transportation, construction, hotels, mining, drinking water, transportation services, telecommunications and others. Second, *murabahah* consumptive financing still relies on the pattern of consumptive lending in the form of a privileged civil servant decree as collateral. The object of the contract is money, not the real sector, so that the *murabahah* contract fraud by Sharia bank A also surfaced. The *murabahah* contract that is carried out between BA customers and Sharia bank A is one of the cases that justifies Islamic banks only have sharia labels, but their implementation has not been sharia.

**Keywords:** *Sharia Compliance; Murabaha Contract Fraud*

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## INTRODUCTION

The concept of murabahah financing in a murabahah contract is Islamic banks will buy the goods requested by the customer and then the bank sells it back to the customer with additional bank profits or margins. However, in reality, banks are only intermediary institutions that do not have goods according to customer requests, so to fulfill these requests, banks must first buy them from suppliers<sup>1</sup>. Murabaha contracts

based on commercial transaction are expected to be a solution for the profit sharing system that tends to be high risk. Determination profit at the beginning is actually legal and correct according to sharia because *murabahah* is a sale-purchase-based contract that is oriented to something real<sup>2</sup>.

As a form of commercial transaction, the pillars that must be fulfilled in *murabahah* are the general pillars of commercial transaction, including: 1. Seller and buyer. Both are required to be intelligent and different people. 2. Acceptance of consent. This pillar requires that the perpetrators of *Baaligh* and reasonable, the compatibility between acceptance and consent, and its implementation in one assembly. 3. The object of commercial transaction. The goods being traded are required to exist (not camouflage) and be owned by the seller. Clarity of specification of the object of sale and purchase is a must because it relates to the honesty and willingness of both parties, the exchange rate (price) must be definite and clear in both type and amount<sup>3</sup>. These conditions are the basis for being free from bank usury. The accommodation of this encounter point against the interpretation of usury banking, hence the Indonesian Ulema Council through Declaration of the National Sharia Council - the Indonesian Ulema Council, pulled out the number 1 declaration Year 2004 concerning Interest (profit). This declaration provides a legal rule that forbids interest in transactions of banking which departs from the rules of Islamic law. These interests or profits called usury which is forbidden in Islamic under the banking debt transactions<sup>4</sup>.

Instruments and consumptive financing *murabahah* contracts are the main issues in this study due to *murabahah* contract instrument is the financing that is most in demand by Islamic bank customers. Moreover, the *murabahah* instrument is one way for customers to obtain the goods they need from the process of commercial transaction contracts with banks. In fact, the *murabahah* contract that is carried out still has many problems, both positive legal issues and the issue of enforcing *mu'amalah* rules. So far, the business activities of Islamic bank A have not been maximally carried out in the productive sector. Productive sectors are livestock, fisheries, food crop agriculture, plantations, food and beverage processing industry, crafts, trade, transportation, construction, hotels, mining, drinking water,

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transportation services, telecommunications and others. This real sector is part of the fulfillment of *mudharabah* financing instruments, besides the *murabahah* instrument.

Aspects of the benefits obtained from the *murabahah* instrument is the presence of a margin. Margin affects *murabahah* financing instruments, especially *murabahah* consumptive financing. Margin is caused by the increase of production costs that makes the price of goods also expensive. This has an impact on the decline in people's purchasing power, thereby reducing the demand for *murabahah* financing. The decrease in demand for *murabahah* financing will be followed by a decrease in the *murabahah* margin.<sup>1</sup> Sharia consumptive financing is a type of financing that is given for the outside business proposes which are generally individual in nature. This consumer financing is needed by customers to meet secondary needs.<sup>2</sup>

Sharia compliance by sharia banks is the fulfillment of all sharia principles in all activities carried out. Sharia compliance is one part of a good sharia banking governance system (known as good corporate governance). The existence of a *murabahah* contract fraud case in the form of a consumptive loan distribution pattern at a Sharia bank A, is a form of violation of sharia compliance which consists of sharia principles.

Sharia principles are agreement rules based on Islamic law that apply to fund depositing activities, financing business activities, and or other activities declared in accordance with sharia that are binding on banks and other parties. The sharia principles are the authority of the competent institution in determining fatwas in the field of sharia as regulated in the provisions of article 1 number 12<sup>3</sup>: “*whereas Sharia Principles are principles of Islamic law in banking activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia*”. This means that without fatwa from an authorized institution, sharia bank cannot run and therefore it is called as bank with sharia principles.

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<sup>1</sup> Uswatun Hasanah, 'IMPLIKASI PERUBAHAN KEBIJAKAN POLA PELUNASAN PEMBIAYAAN MURABAHAH PADA PT. BANK A SYARIAH CAPEM SIGLI', *Share: Jurnal Ekonomi dan Keuangan Islam* (2013). DOI: <https://doi.org/10.22373/share.v2i1.1405>.

<sup>2</sup> Rahmati, Israk Ahmadsyah, and Safarul Aufa, 'Analisis Pengaruh Pembiayaan Modal Kerja , Pembiayaan Investasi , Dan Pembiayaan Konsumtif Terhadap Total Aset Bank A Periode 2016-2019', *Jurnal Ekonomi* Volume 02, Nomor 03 (2019): p. 152–160.

<sup>3</sup> Nurjannah Septyanun et al., *Hukum Dan Perbankan Syariah: Dinamika, Konstruksi Paradigma Pembaharuan Hukum Islam Di Indonesia*, 2020, p.110, <https://publikasiilmiah.ums.ac.id/handle/11617/11867?show=full>.

This study is considered important in order to criticize and measure the extent to which positive law enforcement in this case the provisions of the legislation on Islamic banking which contains sharia principles can be implemented properly and correctly by Islamic banks on one of their financing instruments. Furthermore, law enforcement based on positive legal provisions guided by sharia principles has a correlation with sharia compliance, especially in cases of murabahah contract fraud at Islamic bank A in Indonesia.

This research used normative or doctrinal legal research with a critical legal study approach. Normative or doctrinal legal research is a view that conceptualizes law as: (1) universal principles of morality or justice, (2) positive rules that are generally accepted in certain areas in *abstracto* (national law/state law), and (3) judges' decisions made in *concreto*.<sup>4</sup> The research was conducted using systematic, logical and rational scientific steps and stages, making the whole process of scientific writing as a logic explanation thought which is a dialectical process between theory and data.<sup>5</sup>

## DISCUSSIONS

### 1. Relation on Law Enforcement and Sharia Compliance

The problem of law enforcement always tends to be dynamic in the dynamic interaction between the legal aspects in expectation (*das sollen*) with aspects of the application of law in reality (*das sein*)<sup>6</sup>. Law enforcement is needed in order to minimize inequality in aspects of norms and their implementation. Stahl explained the concept of state law (*rechtsstaat*), that the main elements are the protection of human rights, *trias politica*, *wetmatig van bestuur* and administrative justice. Meanwhile, according to Scheltema, the rule of law is legal certainty, equality, democracy, and government that serves the public interest.<sup>7</sup>

<sup>4</sup> Sulistyowati Irianto, 'METODE PENELITIAN KUALITATIF DALAM METODOLOGI PENELITIAN ILMU HUKUM', *Jurnal Hukum & Pembangunan* (2017).

<sup>5</sup> F.C. Susila Adiyanta, 'Hukum Dan Studi Penelitian Empiris: Penggunaan Metode Survey Sebagai Instrumen Penelitian Hukum Empiris', *Administrative Law and Governance Journal* (2019).

<sup>6</sup> Ucuk Agiyanto, 'Penegakan Hukum di Indonesia: Eksplorasi Konsep Keadilan Berdimensi Ketuhanan', *Hukum Ransendental*, no. 4 (2013): 493–503.

<sup>7</sup> Muhammad Tahir Azhary, *Negara Hukum: suatu studi tentang prinsip-prinsipnya dilihat dari segi hukum Islam, Implementasinya pada periode Negara Madinah dan Masa Kini*, Bulan Bintang, Jakarta, 1992, hlm. 66 dan 73.

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Harmonious and balanced law enforcement is a form of legal certainty and justice. Soerjono Soekanto argues that "The essence and meaning of law enforcement lies in the implementation of harmonious relations of values that are outlined in solid rules and are embodied by attitudes of action as a series of elaboration of values at the last stage, in the context of creating, and maintaining peaceful and social life"<sup>8</sup>.

Indonesia as a state of law (*rechtsstaat*), as well as a country that accommodates religious values as seen in the provisions of the first precepts of Pancasila, namely "*Ketuhanan Yang Maha Esa*". This means that apart from being a state of law, Indonesia is also a religious state (nomocracy) of Islam. This is reinforced by the existence of positive legal products derived from Islamic values such as Law Number 21 of 2008 concerning Sharia Banking, Fatwa of the National Sharia Council of the Indonesian Ulema Council, as the basis for bank concepts and operations with sharia principles.

*One of the substance of the State of law is the guarantee of the protection of human rights (human rights). Therefore, the context of the freedom of religion cannot be separated from the HAM as it is a human right that belongs to every citizen to embrace a religion according their respective beliefs. By understanding the existence of Nomokrasi Islam as the country's law that put the norms of Islamic law (Sharia) in the Organization of the Government of a country, then the right of religious freedom also need to be protected.*<sup>9</sup>

The logical consequence of a state that applies legal dualism, namely positive law and Islamic law. both must run in harmony and balance in order to achieve law enforcement itself. When there is a conflict between the two between positive law and Islamic law, the state must be present in providing the best choice of law for its citizens. The best choice of law in solving problems in the banking

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<sup>8</sup> Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, PT RajaGrafindo Persada, Jakarta, 2011, hlm. 8.

<sup>9</sup> Muhammad Yunus, 'Freedom of Religion in the Principles of the Islamic Nomokrasi', *Journal of Humanity*, Volume 3, Nomor 2 (2015): p. 115–125. DOI: 10.14724/jh.v3i2.40, url: [https://www.researchgate.net/publication/283187105\\_FREEDOM\\_OF\\_RELIGION\\_IN\\_THE\\_PRINCIPLES\\_OF\\_THE\\_ISLAMIC\\_NOMOKRASI/citation/download](https://www.researchgate.net/publication/283187105_FREEDOM_OF_RELIGION_IN_THE_PRINCIPLES_OF_THE_ISLAMIC_NOMOKRASI/citation/download),

sector is not fully given to citizens through contracts that are built, but also through state intervention in the form of regulations and fair judges' decisions.

The similarity of law applied in accordance with the principle of choice of law, which has been established based on Law Number 3 Year 2006 is the sharia principle. It means that all subjects of the choice of law in sharia economic cases are subject to submit to the sharia principles.<sup>10</sup>

One of the decisions of the Religious Court Judges regarding banking disputes is the decision of the Bandung Religious High Court, No.072/Pdt.G/2018/PTA.Bdg. In the decision, the religious court examines and decides on sharia banking dispute cases based on the main legal basis, namely Article 55 paragraphs (1) and (2). Then in the murabahah bil wakalah contract which causes problems between the Islamic bank and the customer due to the different interpretations of the contract between the parties. The first grades judge decision sates that the matter is not within his jurisdiction. In the judge decision, the rule breaking of the religious court judge was not carried out. This should be more about the use of fundamental principles in sharia contracts, which are the references. Not to standard contracts that are not derived from Islamic law. Islamic law that is taken into consideration is only in one verse, namely QS. Surah Al-Isra 'verse 34.<sup>11</sup> On the other hand, judges or *qadi*' in Islamic law have the authority to resolve sharia disputes. In addition, the contract must also be traced correctly, whether it has fulfilled the requirements and pillars of the contract based on Islamic law. Perhaps there is a contract clause that violates the pillars and terms of the contract, so that in the end the contract can be canceled by law due to the clauses that are prohibited in it, which are usury and dzolim.

## 2. Case of Murabahah Contract Misappropriation at Bank A Syariah

Murabahah as an exchange transaction contract requires the seller to have the right to take legal action against the object sells. In addition, murabahah as a form of commercial transaction trust requires the seller and buyer to know each

<sup>10</sup> Zainil Ghulam, 'Implementasi Maqashid Syariah Dalam Koperasi Syariah', *Iqtishoduna*, Volume 7, Nomor 1 (2016): 90–112.

<sup>11</sup> JDIH Mahkamah Agung RI, *PUTUSAN NOMOR 0560/Pdt.G/2015/PA.Mtr* (2015). July 10, 2020.

**Commented [215]:** (the word dzolim is refers to english or arabic ?)

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other and be honest with each other regarding the object of sale and purchase, both the specifications of the goods, the acquisition price, the desired margin, and the method of payment. Included in the acquisition price are the cost of goods and their procurement costs, so that the acquisition price is only known after the goods are legally owned by the seller. Along with the emergence and development of the Islamic banking industry, murabahah was adopted as one of the contracts in Islamic bank financing products. The use of murabahah as one of the financing contracts binds Islamic banking to comply with the rules that apply to it.<sup>12</sup>

In a murabahah contract, both parties should buy and sell with pleasure and voluntarily, without any coercion. This provision is as stated by Allah SWT:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ

*"... do not eat each other's property by vanity, except by way of commerce that arises from the willingness between you..." (Surah An-Nisaa ': 29)*

The case of a murabahah consumptive financing contract came to the surface with a complaint from a civil servant who felt suffocated by Bank A that suddenly went viral on social media. Inviting sympathy from netizens. Information obtained by mediaA.com. This outpouring started from the owner of an account named BA. This figure was recently known to be a mathematics lecturer at UIN. The confession concerned in his writing entitled: "Banks, You Trap My Neck", in the article BA explained: *"Not so long ago, in June 2014, after finishing a small meeting with my family, while having dinner, the next morning I agreed to borrow money to you, Bank. I did that because it was very urgent. I don't know if other people will also do the same, when in a pinch like me. As a civil servant, only the Bank can provide a quick solution, even though I know this is not "problem solving without problems".*<sup>13</sup>

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<sup>12</sup> Lely Shofa Imama, 'KONSEP DAN IMPLEMENTASI MURABAHAH PADA PRODUK PEMBIAYAAN BANK SYARIAH'. *IQTISHADIA: Jurnal Ekonomi & Perbankan Syariah*. Volume 1 Nomor 2 (2014), p. 221, <https://doi.org/10.19105/iqtishadia.v1i2.482>.

<sup>13</sup> Redaksi Beritakini.co, 'Heboh Status PNS Terjerat Kredit di Bank A: Pinjaman 200 Juta dibayar 500 Juta', diupload: 20:50 WIB, 24 Maret 2017, url: <https://beritakini.co/news/heboh-status-pns-terjerat-kredit-di-bank-A-pinjam-rp-200-juta-bayar-rp-500-juta/index.html>. Diakses pada tanggal 1 Juli 2020.



There are various financing schemes for Islamic banks, one of which is the murabaha scheme. Murabahah is financing in the form of rupiah currency at Bank A Syariah using sharia principles with a Murabahah contract, namely financing provided to all members of the community with commercial transaction system. In this case, the Customer as the buyer and the Bank as the seller, the selling price of the Bank is the purchase price from the supplier plus the agreed profit and stated in the contract. In Islamic banks, including Sharia A bank, there are no loans without margin. The benefits obtained by customers from the murabahah scheme according to information from Sharia A bank are the requirements that are easy and in accordance with sharia principles, provide opportunities and ease of obtaining financing facilities, improve quality of life customers with an installment payment system through direct deductions from the monthly salary received every month.

Providing loans with an agreed scheme, namely murabaha. In this scheme, customers with a background of Civil Servants/State Civil Apparatus with the following requirements: fill out an application form, 3x4 = 3 sheets of photo (husband/wife who is married), show original proof of identity and submit 2 photocopies (Husband/Wife who is married), List of salary details (2 copies), Power of attorney for salary deduction (2 copies), KARPEG (2 copies), TASPEN (2 copies), Shows original Certificate Appointment of Employees (80%, 100% & Final) and submit 2 copies, NPWP (Financing 100 million 2 copies), Show original Family Card and submit 2 copies, Show original Marriage Certificate and submit 2 photocopies sheet, Have a Firdaus Savings Book (2 copies), Additional guarantee (Financing above the maximum limit), Not included in the black list of Bank Indonesia and not listed as a bad/problematic financing customer.<sup>14</sup>

The provisions must be fulfilled by the prospective customer administratively. The Decree of Civil Servants is a guarantee and privileges as collateral. This was justified by BA customers of A Syariah bank, that states: *"Banks are very good, without further ado, they can directly lend money, maybe because we are 'your brothers in the Bank', or because of a sacred letter with a*

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<sup>14</sup> Redaksi Beritakini.co, Op.cit

*state institution stamped in the form of a civil servant decree" "The decision to borrow money from the bank is one solution when you are stuck or for a consumptive need. Because only with the decree, we can take money from the bank. The process is very easy and not complicated like those young entrepreneurs whom need money to open or develop a business".<sup>15</sup>*

Making civil servant decrees as collateral for loans at banks is a common habit in Indonesia including banks with sharia labels. In fact, the commercial transaction system applied to the murabaha scheme. Commercial transaction in the concept of murabahah, based on the Fatwa of the National Sharia Council of the Indonesian Ulema Council No. 04/DSN-MUI/IV/2000, commercial transaction is allowed. On the other hand, murabahah contract deviated is called *ba'i al-inah* which is unlawful. This is based on the argument that: "Commercial transaction of goods is unlawful if it is not in someone's possession (*bai'atani fi ba'iah*)". The object of commercial transaction is a person's full property. Someone can sell goods that do not belong to him/her, if someone gets permission from the owner of the goods. As the Prophet sallallaahu 'alaihi wa sallam said:

لَا تَبِعْ مَا لَيْسَ عِنْدَكَ

"Do not sell things that do not belongs to you." (HR. Abu Dawud 3503, Tirmidhi 1232, An Nasaa'i VII/289, Ibn Majah 2187, Ahmad III/402 and 434; authenticated by Shaykh Salim bin 'Ied Al Hilaly).

The murabahah contract is distorted in the form of *ba'i al-inah* and is considered a *hilah* to take usury. *Usury* is one of the sharia principles that is prohibited in sharia banking activities. The *Bai-Inah* contract to be used in times of emergency. This explains the reluctance of the middle-east scholars to accept the contract's validity as the *Bai-Inah* transaction, although legally valid, is considered as a "legal trick" to facilitate a contract which has no real economic value due to the absence of asset transfers. The main argument was that the intention of the contract is not to trade (commercial transaction) an asset, but to create a debt to

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<sup>15</sup> *Ibid*

which a margin is built in. This margin is seen as too close for comfort to the concept of interest on top of a loan.<sup>16</sup>

*At the stage of implementing murabahah financing at bank A, the customer on behalf of BA felt very helped by the loan given under the name of the murabahah contract. The murabahah contract is signed and agreed upon, but the fresh funds are realized, and are not in the form of commercial transactions as the concept of murabahah. This was explained by a BA customer, that: "Alhamdulillah, all problems related to my sister were solved with the existence of a Sharia bank A loan. It's just that my civil servant salary is deducted by the bank Rp. 2,700,000 per month every month. For me, it doesn't matter, even if I don't cut my salary every month, I can never save it and usually cut it for our credit. Life as usual."*

*Customer's understanding of contracts and financing instruments at Islamic banks is very important so that problems do not occur in the future. And problems that should have been avoided turned out to come and be known by BA when they were going to pay off the loan. On March 2017, BA learned that there was a fundamental problem with the murabahah financing contract that it is agreed and signed. For three years or thirty-six months, I gradually paid Rp. 97.200.000,- from 2014 to 2017. And the remaining debt amounted to Rp. 185,383,000,- from a loan of Rp. 200,000,000,-. With the money received at that time approximately Rp. 190,000,000 after deducting insurance and administration. Based on the data obtained when he was about to repay the loan, BA gave an illustration that: "I borrowed Rp. 200,000,000,- for a period of 15 years, EQ Rate 10%, monthly installments of Rp. 2.777.000,- Profit/Bank Margin Rp. 300,000,000, - So my loan from Rp. 200,000,000,- becomes a debt of 500,000,000,-. After seeing the print outs of the credit payment newspapers that have never been in arrears because they are directly deducted from the salaries of civil servants. Seen in the note 'Details of Repayment Calculation'. I can only shake my head and give up my*

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<sup>16</sup> Islamic Bankers Resource Centre, Discussions on Islamic Banking, url: <https://islamicbankers.me/islamic-banking-islamic-contracts/financing-bai-inah/>, July 10, 2020.

intention to pay off / close all my credit at the bank, my conclusion is let this bank enjoy 300,000,000 profits from me for 15 years”.

The flow of the murabahah financing problems of Islamic bank A can be seen in Figure 1.

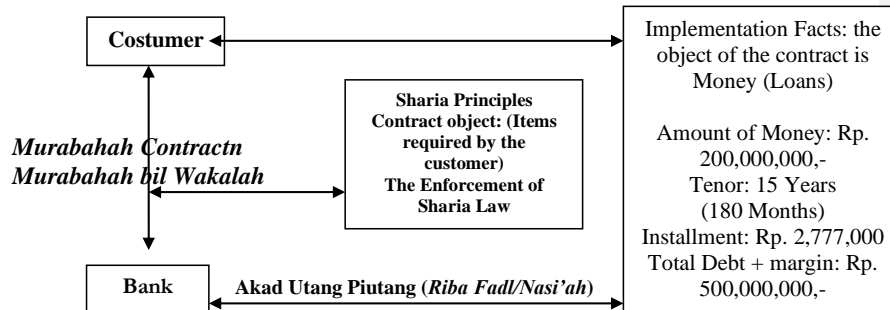


Figure 1.

Case Flow of Bank A Syariah Murabahah Contract Misappropriation (data processed)

This case is a valuable lesson in the evaluation and existence of Islamic banks in Indonesia, especially Islamic Bank A and other banks with sharia labels. Misunderstanding of contracts in Islamic bank financing tends to be more common, so that it has an impact on aspects of law enforcement on sharia compliance. The law enforcement in question is that between positive law and the rules of Islamic law which are the reference for banks and customers, in the implementation aspect there is a chance to experience a "legal trick" (Hilah) in the contract made and signed. Aspects of sharia compliance, that sharia banks are required to carry out their activities in accordance with sharia principles, and not carry out activities prohibited by sharia such as usury, gharar, maysir and dzolim, which in fact are still widely found.

The primary solution to this problem can be done internally through deliberation and banking mediation. Deliberation or negotiation between the two disputing parties is the first method that is always carried out by the banking community in solving problems that arise. This deliberation effort is carried out internally between the bank and the customer only, without involving an external

third party. Both parties are trying to negotiate to find an agreement as a solution to the problem<sup>17</sup>. This deliberation requires knowledge and understanding based on the rules of mu'amalah maliyah banking by both parties. The goal is to find common ground and solutions to problems that arise between customers and banks. The customer can apply for repayment of the principal amount of the loan without margin. This is based on the provisions of the positive law, namely Article 1245 of the Civil Code, that on the basis of good faith apply for repayment of the principal loan. Customer rights in the form of reduction and/or elimination of interest and fines<sup>18</sup>.

In the empirical facts, community needs financial services where ultra micro financing includes financing for the purchase of objects in the form of multi goods and objects in the form of multi services. This should be one solution to the form of murabahah financing agreement used. In order to run the implementation of financial service transactions in banking, financing in the form of ultra micro in accordance with sharia principles is carried out. By regulation, DSN-MUI deems it necessary to stipulate a fatwa on ultra-micro financing based on sharia principles to serve as guidelines. The fatwa is number 119/DSN-MUI/II/2018 regarding ultra-micro financing (*al-tamwil li al.hajah al.mutanahiyat al-shu ghra*) based on sharia principles. Furthermore, on the side of sharia bank A, it has coordinated with the National Sharia Council of the Indonesian Ulema Council and sent a letter. The letter is letter No. 683/DIR/II/2016 dated 15 February 2016 regarding Requests for Opinions and Fatwas. These efforts, as a form of accommodation to problems that arise, both from customers and from third parties.

## CONCLUSION

The decisions of the religious courts that examine and decide cases of sharia banking disputes on the main legal basis are Article 55 paragraphs (1) and (2). For example, in the *murabahah bil wakalah* contract which causes problems between the

<sup>17</sup> Rika Delfa Yona, 'Penyelesaian Sengketa Perbankan Syariah Di Indonesia', *Economic: Jurnal Ekonomi dan Hukum Islam* 4, no. 1 (2014): p. 59–81.

<sup>18</sup> Nurjannah Septyanun; Rina Rohayu H, 'Diseminasi Online Model Perlindungan Hukum Bagi Nasabah Perbankan Akibat Force Majeour Covid-19 Di Kota Mataram', *Community Engagement & Emergence Journal*, Volume 2, Nomor 1 (2020): p. 69–76, <https://journal.yrpioku.com/index.php/ceej/article/view/132>.

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2.(in the conclusion it is not allowed to mention articles of act or regulations)

Islamic bank and the customer due to the different interpretations of the contract between the parties. The judge's argues that the problem is not within his authority. Rule breaking by religious court judges is in the form of using the fundamental principles of sharia contracts, as a reference and not on standard contracts whose sources are contrary to Islamic law. Judges or qadi' in Islamic law have the authority to settle sharia disputes. In addition, the contract must also be traced correctly, whether it has fulfilled the pillars and conditions of the contract based on Islamic law.

In fact, there are contract clauses that violate the pillars and terms of the contract so that at the end, the contract can be canceled by law because there are prohibited clauses, namely usury and dzolim. A critical study of the murabahah instrument in sharia bank A is a form of measuring law enforcement on sharia compliance. Law enforcement against sharia principles in the context of implementation is still not directly proportional. This is indicated by the existence of a "legal trick" (Hilah) in the murabahah consumptive financing agreement made and signed by the Islamic bank and the customer. Hilah performed is part of the legalization of taking usury on murabaha transactions. The rolling of cases that befell BA, has an impact to the public, related to customer distrust of the murabaha consumptive financing contract and its implementation at Bank A Syariah.

Thus, this case is an important note for Indonesian Islamic banks, so that they always return to the main fundamental basis for the establishment of Islamic banks which must comply with the principles of *muamalah maliyah* and sharia principles contained in the positive legal provisions and the Fatwa of the National Sharia Council of the Indonesian Ulema Council. Another effort is maximizing the role of the Sharia Supervisory Board in supervising the operational activities of financing contracts at sharia bank A.

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