

The Role of Notaries in Murabahah Financing Agreements

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ABSTRACT

The role of notaries in the legal system in Indonesia is very significant, especially in supporting legal certainty in the Islamic banking sector through the Murabahah financing contract. This contract is based on the principle of buying and selling with agreed profits, so it requires a notary to prepare documents that comply with positive law and sharia principles. Notaries are authorized to make authentic deeds, provide legal counseling, and ensure the validity of each element of the agreement, including payment clauses, profits, and fines. In this case, notaries act as legal guardians who guarantee transparency and justice, prevent potential violations of law such as usury practices, and reduce the risk of future disputes. This study uses a normative legal approach by examining related legislation, such as Law No. 2 of 2014 concerning the Position of Notaries and Islamic Banking Law. The study results show that notaries have a dual role: as legal enforcers who ensure that documents meet legal requirements and as law enforcers who maintain the integrity of the transaction process. With the increasing need for Sharia financing, the existence of notaries is becoming increasingly relevant to support equitable Sharia-based economic development. In conclusion, notaries are a key element in Murabahah transactions that not only function administratively but also substantively, helping to create a transparent and trusted financial system in Indonesia. This strengthens the position of notaries as an important pillar in ensuring the sustainability of Sharia-based law and economy.

Keyword: Notary; Murabahah; Sharia Law; Financing

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1. INTRODUCTION

In the context of legal developments in Indonesia, the role of notaries is very important as public officials who have the authority to make authentic deeds. Notaries play a key role in ensuring legal certainty in various transactions, including in Islamic banking financing transactions with Murabahah contracts. (Yudistira, Yuhelson, & Kencanawati, 2023) This role provides legal certainty, and document validity, include helps prevent disputes in the future.

Article 1 of Law Number 2 of 2014 concerning the Position of Notary (UUJN, states that notaries function as executors of legal duties that guarantee the legality of certain agreements or legal actions. (Monetary & Santoso, 2023) This includes the authority to make, store, and provide legal documents such as authentic deeds, which have absolute evidentiary force as regulated in Article 1870 of the Civil Code.

Sharia financing transactions such as Murabahah Bil require a careful legal approach to comply with Sharia principles. (Puspita & Yanti, 2023) Notaries are expected to be able to ensure that every element in the financing agreement does not conflict with the provisions of Sharia law and banking regulations in Indonesia. This includes clarity about the benefits, payments, and fine clauses to avoid potential violations of the law that can lead to disputes.

In addition, the responsibilities of notaries include the application of the principle of prudence that ensures the validity of the documents made. This principle not only strengthens legal protection for the parties but also maintains the integrity of the notary profession as a guardian of the legality of public

documents. Notaries also have the authority to provide legal counseling to the parties involved, so that the legal process carried out can be clearly understood.

With the increasing need for financing in society, especially in the Sharia banking sector, the presence of notaries as guardians of law and providers of legal services is becoming increasingly relevant. The role of notaries is not only administrative but also makes a real contribution to maintaining justice and legal certainty in economic transactions. (Arianto & Djajaputra, 2025)

2. RESEARCH METHOD

This research is a normative legal research sourced from legislation (statute approach). The statutory approach inventories and uses laws and regulations related to the research topic to conduct analysis and be used as complete research material. This research uses secondary data in the form of primary legal materials and secondary legal materials. The main legal materials used are laws and regulations related to the position of notary and Islamic banking. Secondary legal materials are in the form of books, research, and other materials relevant to the research object. (Syafriana, 2022)

3. RESULTS AND DISCUSSION

A. *Murabahah Bil Wakalah Financing Agreement*

Murabahah comes from the word "ribh", which means profit. According to Lukman Hakim, Murabahah is a sale and purchase agreement for certain goods in which the seller states the selling price, which consists of the cost of the goods and a certain level of profit, and the buyer agrees to the price. (Hakim, 2012) Murabahah refers to a sale and purchase transaction with a predetermined profit. Thus, Murabahah can be defined as an excess or profit obtained from production or capital, with the word mashdar meaning profit, gain, or benefit. Thus, the concept of Murabahah in Islamic finance refers to the principle of sharing profits and risks in economic transactions. (Mustofa, 2014)

Compilation of Sharia Economic Law (KHES) Article 20 paragraph 6 defines Murabahah as mutually beneficial financing carried out by Shahib al-mal with the party in need through a sale and purchase transaction with an explanation that the procurement price of goods and the selling price have an added value which is a profit or profit sharing and the return is made in cash or installments. (Afifah, Kosim, & Hakiem, 2023)

Law No. 21 of 2008 of the Republic of Indonesia concerning Islamic banking, explains the purpose of the Murabahah financing form that in financing the goods the seller will set the purchase price of the goods to the buyer. Then the buyer pays with additional profit which has been previously agreed upon.

Based on the explanation above, it can be concluded that Murabahah is a sale and purchase transaction in Islamic finance where the seller sets the price of goods with a predetermined profit, agreed to by the buyer. This term comes from Arabic which means "profit". Murabahah shows the principle of sharing profits and risks, with payments being made in cash or with a delay. Thus, it can be seen that Murabahah is a form of sale and purchase transaction in Islam where the seller discloses to the buyer the purchase price of the goods and the profit taken. (Ginting, Zulkarnain, & Anwar, 2023)

In the context of Islamic finance, Murabahah is one of the financial instruments that is often used, especially in trade and investment financing. In this context, a bank or financial institution buys goods at the request of a client and resells them at an agreed price, including a predetermined profit margin. (Hasibuan, Annam, & Nofinawati, 2023) Murabahah is very important because it allows financial transactions that are under Sharia principles in Islam, which prohibit usury (interest) and require clarity in sale and purchase transactions. (Saputri & Sulfian, 2024)

In Murabahah transactions, several pillars must be met. The first is the actor of the contract, which consists of ba'i (seller) and musytari (buyer). Ba'i is the party that has the goods to be sold, while musytari is the party that needs and will buy the goods. The second is the object of the contract, which is called mabi' (merchandise). The object of the transaction must be a commodity that has a clear equivalent, can be measured, weighed, or has a clear size, content, and type. In addition, the object must have a clear price or staman. The third is shighat, which consists of ijab (offer) and qabul (acceptance). Murabahah transactions must be carried out through a clear and convincing ijab and qabul process between the seller and the buyer. By fulfilling these three pillars, a murabahah transaction can be considered valid according to Islamic law.

Murabahah financing in Islamic banking can be done through the following steps:

1. The customer submits an application and purchase agreement for an item or asset to the Islamic bank.
2. If the bank accepts the application, the bank must first purchase the asset that it has legally ordered from the trader. The bank purchases the goods in the name of the bank itself, and the purchase is

legal and free of usury. The bank may also give the required power of attorney to the customer. So, the murābahah contract is carried out after the goods become the property of the bank.

3. The bank then sells the goods to the customer (orderer) at the purchase price plus margin or profit. The customer must buy it according to the agreed agreement.
4. Make a sales and purchase contract between the bank and the customer. The bank may ask the customer for collateral or pay a down payment when signing the initial order agreement. (Yadi, 2015)

The Murabahah contract mechanism in Sharia financing is one of the important instruments that allows customers to obtain goods or services with the agreed profit principle. In distributing Murabahah financing, financial institutions act as follows:

1. The bank acts as the party providing funds in Murabahah transaction activities with customers.
2. The bank can finance part or all of the price of goods whose qualifications have been agreed upon.
3. The bank is required to provide funds to realize the provision of goods ordered by customers.
4. The bank can provide a large discount that is reasonable without being agreed upon in advance. (Muhamad, 2015)

Based on this, the Murabahah contract has a dual role in the Sharia financial system. For banks, this contract functions as one of the main mechanisms for distributing funds, allowing them to obtain a profit margin from the sales and purchase transactions implemented. Meanwhile, for customers, the Murabahah contract offers an alternative to get certain goods through financing from the bank, with easy payment in the form of fixed installments during the agreement period. This provides financial discomfort to customers without the burden of their payments during the contract period.

B. The Role of Notaries in Murabahah Financing Agreements

A notary, which in English is called notary and in Dutch is called van Notaris, is a public official who is authorized to make authentic deeds and other legal acts. (Mahar, 2024) Article 1 of Law Number 2 of 2014 concerning the Position of Notary states that a notary is a public official who has the authority to make authentic deeds and has other authorities as regulated in this law or other laws. Based on these provisions, notaries have an important role in the process of making legal documents, such as agreements, sales and purchases, or other documents that require legality and authentication. Notaries act as independent witnesses and neutral third parties in the process of making deeds, so that they can provide legal certainty regarding the validity and authenticity of the document. The authority of this notary aims to ensure the security and validity of legal documents in society. The existence of a Notary is expected to meet the needs of the community needs someone (figure) whose information is reliable, trustworthy, and whose signature and stamp provide strong guarantees and evidence, an impartial expert and an advisor who is not flawed (onkreukbaar) or (unimpeachable), who keeps his mouth shut and makes agreements that can protect in the future. When an advocate defends someone's rights when a difficulty arises, a notary must try to prevent that difficulty from occurring. (Kie, 2007)

The notary is a noble legal profession known as "officium nobile". Deeds made by a notary can serve as a legal basis for a person's rights and obligations, as well as their property status. Mistakes in the deed made by a notary can cause a person to be revoked or burdened with obligations. Therefore, notaries must comply with the provisions of the UUJN when carrying out their duties. (Yustica & et.al, 2020)

The role and function of a notary is a public official with the authority of the government to make authentic deeds and validate other legal documents. Notaries are also tasked with providing legal services and consultations to the public, with the responsibility to maintain legal certainty and the validity of legal documents. Their role is very significant in maintaining order and trust in various legal and administrative transactions in Indonesia. (Nurwandri & et.al, 2023)

The authority of a Notary is regulated in Article 15 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN), namely:

1. Making an authentic Deed that includes all acts, agreements, or stipulations required by law and/or desired by the interested party to be stated in an authentic Deed, in addition, it must guarantee the certainty of the date of the Deed, store the Deed, provide grosse, copies and excerpts of the Deed, as long as the making of the Deed is not also assigned or excluded to other officials or other people as determined by law.
2. Validating signatures and determining the certainty of the date of private letters by registering them in a special book;
3. Recording private letters by registering them in a special book;
4. Making copies of the original private letter in the form of copies containing descriptions as written and described in the relevant letter; 5. Validating the suitability of the photocopy with the original document;

5. Providing legal counseling in connection with the making of a Deed;
6. Making a Deed related to land; or
7. Making a Deed of auction minutes.

Article 38 paragraph (3) of the UUJN regulates the role of a notary in determining whether an action can be included in a deed. Before making this decision, the notary must examine the authenticity of the documents provided, analyze the available evidence, listen to statements or statements from related parties, and consider all related legal aspects, including potential legal problems in the future. Thus, the authority of a notary in making a deed is not only limited to the technical process of making it but also involves mature legal considerations and a deep understanding of the applicable laws and regulations.

Notaries play a very significant role in providing legal certainty to the community. Notaries are responsible for preventing legal problems from occurring through original deeds they make which can be the strongest source of evidence in court. The main task of a notary is as a legal deed maker. According to Article 1870 of the Civil Code, an authentic deed is absolute and strong evidence for the parties who made it. The law gives notaries the authority to make such absolute evidence. This means that the contents of the original deed are considered true. It is particularly crucial for the community as a tool to prove the need for personal and business interests.

The role and responsibility of a notary in carrying out the making of deeds is very essential for a group of people who will establish a business entity, in addition to obtaining legal certainty from the government, the position of the business entity becomes strong with the existence of an authentic deed in the form of a deed of establishment. One form of state service to its people is that the state provides the opportunity for the people to obtain evidence or documents in the form of authentic legal deeds relating to civil law, for this purpose it is given to a Public Official held by a Notary.

Notaries are assigned by the government to help the community by doing authentic deeds. In carrying out their duties, notaries must understand properly and correctly and be careful in making deeds. Because notaries and banks are partners but not companies, notaries have many obligations and authorities. (Kawoan, 2018)

Notaries are responsible if there is a problem with the deed they have made. This responsibility can be in the form of criminal, civil, code of ethics, and administrative responsibility. (Nurmayanti & Khisni, 2017) Notaries can be held civilly liable by parties to the deed or third parties who are harmed based on Article 1365 of the Civil Code if the notary is proven to have committed an unlawful act. (Paskadwi, 2022)

Notaries are also given the authority to provide legal counseling to parties involved in a transaction, especially regarding the terms and conditions that must be met by all parties in a transaction to be notarized, so that the possibility of the transaction being carried out in a state that is void by law or can be requested for cancellation in court is avoided.

The role of a notary in making financing agreements in Islamic banking is a public official authorized to make authentic deeds, regarding certain legal acts, especially Murabahah, musyarakah, mudharabah, and ijarah financing agreements. A notary as a public official is authorized to make authentic deeds, especially in financing agreements in Islamic banking. The role of a notary in making financing agreements between Islamic banking and customers (mudharib) is a position that arises because of his position as a public official, as referred to in Article 1 number (1) Jo. Article 15 of Law Number 30 of 2004 concerning the Position of Notary. (Amin, 2017)

The notary must ensure that this Murabahah agreement does not conflict with Islamic law and banking regulations in force in Indonesia. This includes ensuring that the deal does not contain usury or other provisions that violate Islamic principles. The notary must also ensure that the agreement signed by both parties contains all the necessary information and has been prepared clearly and completely. The notary must ensure that all provisions regarding payments, profits, and fines are clearly stated in the agreement. This is to ensure that there is no confusion or dispute regarding the contents of the agreement.

The role of a notary in bank financing transactions with a murabahah financing contract can be divided into three main functions. First, a notary who legalizes documents has an important role in ensuring that all agreements and related documents are prepared in accordance with applicable legal provisions, as well as providing legal certainty to the parties involved.

Second, a notary as a public official functions to provide services to the public by providing services in making authentic deeds that are official, thus providing validity and legal force for the agreement made between the Bank and the Customer.

Third, a notary as a law enforcer acts to ensure that every transaction carried out is in accordance with applicable legal norms, including supervising the process so that it runs transparently and fairly and avoiding potential disputes in the future. Thus, a notary not only plays a role in the administrative aspect but also in maintaining legal integrity and justice in Islamic banking transactions.

4. CONCLUSION

Notaries play a key role in ensuring the legality and validity of legal documents, especially in Sharia-based financing transactions such as Murabahah contracts. As public officials, notaries are responsible for drafting authentic deeds that guarantee transparency, fairness, and legal certainty for the parties involved. Murabahah contracts, which are based on sharia principles, require a careful legal approach to comply with sharia provisions and banking regulations in Indonesia. In the context of sharia finance, notaries provide strong legal protection for banks and customers, enabling smooth economic transactions that comply with sharia principles. With the authority regulated in the UUJN, notaries also contribute to creating a fair and trustworthy legal system. This makes the role of notaries irreplaceable in supporting the development of the Sharia banking sector in Indonesia.

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