

APPLICATION OF THE PRINCIPLE OF PROHIBITION OF "MAGRIB: MAYSIR, GHARAR AND RIBA" IN FINANCING IN NON-HALAL BUSINESS FIELDS

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Abstract

Sharia banking is a type of banking that refers to Sharia principles, which are in accordance with Islamic teachings. type of financing carried out, using the murabahah type of contract in business capital financing activities. The aim of this research is to determine and analyze the application of "maghrib: maysir, gharar, and usury" in business capital financing activities by Sharia banks, and to determine legal certainty in financing small and medium enterprises operating in the non-halal business sector. The method used in this research is normative juridical, using the statutory regulatory approach, books, journals, research results, observation methods and interview methods. The results of this research show that there is financing outside the mechanism and resulting in "maghrib: masyir, gharar and usury" in the form of financing. This is not in accordance with DSN-MUI Fatwa Number 4 of 2000 concerning Murabahah Law Number 21 of 2008 concerning Sharia Banking.

Keywords: Prohibition of Maghrib, Murabahah, Non-Halal Business Financing, Sharia Banking.

I. INTRODUCTION

With the presence of sharia banking in Indonesia, it can provide convenience for the Muslim community in abandoning usury. And can move the wheels of the economy in everyday life. One of the factors that supports economic growth is through sharia banking in Indonesia. In economic activities, the government provides incentives and support for the sharia banking industry, such as providing funds and policies that make it easier for sharia banking institutions to operate. Apart from that, sharia banks also have convenience in carrying out transactions because they use the principles of wadi'ah and mudharabah, in collecting and distributing funds.(OJK 2017)

Murabaha contractis the type of contract (akad) most commonly applied in sharia banking financing activities. The murabahah contract is implemented through a mechanism for buying and selling goods by adding a margin value as a profit obtained by the bank, so the murabahah financing mechanism has several basic characteristics or elements, the most important of which distinguishes murabahah financing from conventional credit, namely, the existence of goods or underlying assets of the transaction where the goods must remain in the bank's responsibility, as long as the bank and customer transactions have not been completed.(OJK 2016)Because the aim of Islamic law is to achieve benefit (maslahah).(Yumarni, Suhartini, and Nazir 2019)The use of funds carried out by Sharia banking uses halal methods where the funds are only used to finance halal and legal businesses, such as financing houses, vehicles, Umrah and other halal businesses. On the other hand, Islamic banks do not channel funds to finance non-halal products such as liquor businesses, prostitution, cigarettes, buying and selling pork and other things that are not halal.(Sahroni 2023)

The financing mechanism through murabahah contracts that occurs in sharia banking, of course, does not guarantee when carrying out practice in the field. Whether it is in accordance or not in accordance with the provisions and standards of sharia and applicable laws and regulations. Because there is still a financing process that contains elements of "Maghrib: Maysir, Gharar, and Riba". In the Sharia financing process, as in the case of the financing process for customers at one of the X sharia banks, there is financing that is carried out outside the mechanisms of Islamic teachings. because the customer changed the Sharia contract to a conventional contract, the X sharia bank carried out financing

by providing business capital to the customer, to make a loan by registering a halal business. But apart from that, the customer also has a business which is forbidden in Islam. One type of business registered by the customer at the beginning of the loan was a chicken farming business, but as time went by the customer turned out to have a pig farming business and abandoned the chicken farming business, which is clearly an animal. Pork is forbidden in Islam. Apart from that, there are several customers who also have a business selling and buying liquor made from grape fermentation, in which case the drink contains alcohol and the financing process through a murabahah contract is clearly not permitted.

In the financing process using a murabahah contract, where the customer carries out a business that is prohibited in Islam. Then, juridical problems will arise in the financing process for bank X sharia, because it is contrary to Islamic teachings. In contracts or financing agreements, they do not meet sharia requirements or contain elements of ambiguity or gharar. This will cause legal problems for bank X sharia which has provided funds to customers.

II. METHODOLOGY

This research uses normative juridical methods, namely research that only uses and processes secondary data or also called library research or library research which is conceptualized and developed using legal studies. (Soekanto 2006) The approach in this research uses a conceptual approach regarding problems, the legal system in the financing process carried out by banks for customers who are considered less thorough, so that in essence maqashid Syariah the application of the principles in the murabahah financing agreement is not fulfilled because it contains "Magrib: Maysir, Gharar, and Riba". The data collection techniques used by the author, in this research, were carried out through observation, interviews and literature studies using secondary data using primary, secondary and tertiary legal materials.

III. RESULTS AND DISCUSSION

With the presence of sharia banking in Indonesia. Can provide space for convenience for the Muslim community, in abandoning usury. And can move the wheels of the economy in everyday life. Becoming one of the supporting factors for economic growth through sharia banking in Indonesia. Based on its population, Indonesia is the country with the largest Muslim population because almost 87% of the total population of Indonesia is Muslim. (Finaka 2018) as a country of law, as "Indonesia is a country of law". (Rumatiga Master of Law Graduate School et al. 2021) So, in economic activities, the government provides incentives and support for the sharia banking industry, such as providing funds and other policies that make it easier for sharia banking institutions to operate.

Application of the Principle of "Magrib: Maysir, Gharar, and Usury" in Financing Activities

In essence, maqashid Syariah is a form of manifestation of maslahah that avoids mafsadah from humans, in the form of an indicator of achieving falah (happiness) for the fulfillment of basic human needs in a balanced manner or the fulfillment of maslahah daruriyyah. (Yumarni and Maryam, nd) According to Law Number 21 of 2008 concerning Sharia Banking, article 1 paragraph (1) Sharia banking is everything that concerns Sharia banks and Sharia business units, covering institutions, business activities, as well as methods and processes for carrying out business activities.

One type of financing that uses sharia principles which is financed by sharia banks is murabahah contract financing which linguistically is a form of mutual (meaning mutual) which is taken from Arabic, namely ar-ribhu (الربح) which means excess and additional (profit). (Abdullah Al-Mushih 2004) Murabahah is also a form of masdar from rabaha-yarabihu- murabahatan, which provides mutual benefits by selling goods, the original price of the goods is then added to the agreed profit based on the purchase price. then the amount of profit can be determined in nominal or certain percentages.

In carrying out a murabahah contract, you must fulfill the pillars of the contract in carrying out the transaction, because the contract actor is the bai (seller) is the party who has the goods to be sold, and

the mustari (buyer) is the party who needs and will buy the goods, where the object of the contract is mabi (goods). merchandise) and tsama (price) with the existence of shighah between consent and qabul. Murabahah is also divided into two forms, namely, simple murabahah and murabahah for orders. Simple murabahah is a form of contract in which the seller markets his goods to buyers at a price according to the purchase price plus a margin or profit. Meanwhile, murabahah for buyers is a form of murabahah which involves three parties, namely the orderer, buyer and seller. This form of murabahah involves the buyer as an intermediary because of the expertise or need to order financing applied by Sharia banking in carrying out financing.(Ascarya 2013)

The application of financing principles carried out by banks towards customers is a form of transaction that is permitted in Islam but the form of transaction must fulfill halal aspects in every activity in order to avoid the elements of "maghrib: maysir, gharar and usury". The form of contract used in the financing process carried out by banks is a murabahah contract so that the form of transaction is in accordance with muamalah jurisprudence. According to Imam Malik Al-Syathibi, in achieving the objectives of Sharia which are dharuriyyahz, hajjiyyah and tahsiniyyah and contain five principles of Sharia law, namely: first, maintaining religion (hifdz al-diin); Second, maintaining the soul (hifdz al-nafs); third, maintaining offspring (hifdz al-nasl); fourth, maintaining reason (hifdz al-adl); and fifth, maintaining wealth (hifdz al-mal). As long as legal rules are able to guarantee the achievement of sharia legal objectives, benefit is the ultimate goal.(Hazami 2020)

According to Jaih Mubarak, Maysir is a lottery (al-qimar) which means easy (ease/al-suhulah) because wealth is obtained without difficulty/tiredness in carrying out kasab/effort/effort. Meanwhile, Gharar is a negative mu'amalah that must be avoided because it is a prohibited act. Riba (al-riba) etymologically means increasing (al-ziyadah), while in language riba means growing (al-munu), increasing or becoming tall (al-uluw), towering (al-rifah), and increasing (al- rhyme).(Jaih Mubarak 2022)Even though some people are aware that transactions that contain elements of "Magrib: Maysir, Gharar and Riba" are prohibited, many of them do not really pay attention to this in their daily lives.

So the application of the principle of "maghrib: maysir, gharar and usury" in financing activities must be consistent in carrying out inspections and carrying out direct supervision by Sharia supervisory institutions. So that no legal problems arise from any party.

IV. CONCLUSION AND NEWNESS

Based on the results of research conducted by the author, the author makes conclusions regarding the application of the principles of "maghrib: maysir, gharar, and usury" in financing activities carried out by Sharia banking, in providing convenience for Sharia transactions, through the form of murabahah contract financing which can provide convenience. and profits with a certain nominal or percentage that has been previously determined. Apart from that, it cannot be denied that when carrying out financing activities requires consistency, direct inspection and supervision by a Sharia supervisory agency. This aims to prevent legal issues and ensure that every transaction is in line with values, maintains integrity, and creates a fair and sustainable economy.

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