

Jurnal Notariil

Jurnal Notariil, Vol. 7, No. 2, November 2022, 65-75

Available Online at <https://ejournal.warmadewa.ac.id/index.php/notariil>

P ISSN 2540 - 797X

E ISSN 2615 - 1545

CHARACTERISTICS OF WAKALAH CONTRACT IN FINANCING WITH MURABAHAH CONTRACT

A. Junaidi Abdillah, Dyah Ochtorina Susanti, and Rahmadi Indra Tektona*

Master of Notary Jember University

*Email: rahmadiindra@unej.ac.id

How To Cite:

Abdillah, A, J., Susanti, D, O., Tektona, R, I. (2022). Characteristics of Wakalah Contract in Financing with Murabahah Contract. *Jurnal Notariil*, 7 (2), 65-75, Doi: <https://doi.org/10.22225/jn.7.2.2022.65-75>

Abstract

Act Number 21 of 2008 about Islamic Banking regulates that one of the businesses of Islamic commercial banks is to channel financing under a murabahah contract. Fatwa of the National Sharia Council – MUI No. 04/DSN-MUI/IV/2000 concerning Murabahah regulates the mechanism for granting authorization to customers by banks, to purchase goods from third parties and the murabahah sale and purchase contract must be carried out after the goods, in principle, become the property of the bank. The purpose of this study is to understand, describe, and find the suitability of the characteristic mechanism in financing with murabahah contracts with Fatwa and the provisions of Islamic bank regulators. This research method is normative juridical with a statutory and comparative approach. The research methodology used is doctrinal legal research. Doctrinal legal research is the study of legal rules, principles, concepts or doctrines. In this study, it was found that the characteristics of wakalah contracts in murabahah financing are as a means of granting power of attorney to purchase murabahah objects by customers as proxies from the bank, to then be handed back to the bank and then sold to customers under a murabahah contract.

Keywords: murabahah; sharia bank; wakalah

1. INTRODUCTION

Sharia banking has a goal as mandated in Law Number 21 of 2008 concerning Sharia Banking, namely as a financial intermediary institution that is in accordance with sharia principles, supporting the implementation of national development in order to improve justice, togetherness, and equitable distribution of people's welfare (*Pasal 2, Pasal 3, dan Pasal 4 ayat (1) Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah*). The difference between Islamic banking and conventional banking lies in the principles of sharia which must be followed in every operational activity of Islamic banks. Sharia principles are

principles of Islamic law in banking business activities based on fatwas issued by institutions that have the authority to determine fatwas in the field of sharia, and do not contain elements of *usury, maisir, gharar, haram, and/or unjust (Pasal 1 ayat (12) Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah)*. Sutan Remy Sjahdeini said that sharia banking principles have become a positive law based on the Sharia Banking Law, the understanding of sharia banks regarding Sharia Banking Principles must be focused on understanding the fatwas issued by the National Sharia Council-MUI regarding sharia banking, both those that have been and have been issued. which have not been stated in the regulations of Bank

Indonesia (now the Financial Services Authority) (Sjahdeini, 2014:3).

The Sharia Banking Law stipulates that one of the activities of Islamic commercial banks is to channel financing using a *murabahah* contract (*Pasal 19 ayat (1) huruf d Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah*). Muhammad explained that *murabahah* according to Fiqh is a sale and purchase contract for certain goods, where the seller clearly states the goods to be traded, including the purchase price of the goods to the buyer. Whereas in technical banking, *murabahah* is a sale and purchase agreement of goods at the cost of goods plus a profit margin agreed by both parties (Muhammad, 2003:23). Syafii Antonio defines financing as the main task of banks in the context of providing fund facilities to meet the needs of parties who are deficit units. According to Shafi'iyah, the meaning of *wakalah* is an expression or handover of power (*al-muwakkil*) to another person (*al-vice*) in order to carry out something of the type of work that can be replaced (*an-naqbalu anniyabah*) and can be carried out by the power of attorney, with the provisions of the job is carried out while the power of attorney is still alive (Karim, 2002:20). *Wakalah* also means the activity of submitting, delegating, or granting a mandate or power of attorney, a contract of devolution of power by one party to another party in matters that may be represented, the practice of *wakalah* in a financial institution consists of several parties, namely the representative as the party giving the power of attorney to the representative (Antonio, 2008:120-121).

The implementation of a *murabahah* contract where the bank as the seller of the object to the customer as the buyer has several obstacles, namely the bank does not know the complete specifications of the object of the contract and the object ownership documents cannot be assigned directly to the bank, therefore a mechanism for granting authorization to the customer from the bank is needed. choose the object of the contract and sign

the documents of ownership of the object of financing. Based on the DSN-MUI Fatwa on *Murabahah*, accommodating the mechanism for granting authorization to customers by banks, to purchase goods from third parties and the *murabahah* sale and purchase contract must be carried out after the goods, in principle, become the property of the bank (*Ketentuan Umum Murabahah pada Bank Syariah Nomor 9, Fatwa Dewan Syariah Nasional – MUI No. 04/DSN-MUI/IV/2000 tentang Murabahah*). The Fatwa of the National Sharia Council provides the definition of *murabahah* as the sale of an item to a buyer at the purchase price (*tsaman*) and the required costs plus profits in accordance with the agreement. The act of granting power of attorney from the bank to the customer in the *murabahah* agreement refers to the DSN-MUI Fatwa No. 10/DSN-MUI/IV/2000 concerning *Wakalah* as regulated by the Financial Services Authority (*Surat Edaran Otoritas Jasa Keuangan Nomor 36/SEOJK.03/2015 tentang Produk dan Aktivitas Bank Syariah dan Unit Usaha Syariah*. 37).

The similar studies with this present study have been conducted previously by some researchers. Jannah (2015) in her study examined implementation of *murabahah bil wakalah* in in BRI Syariah Unit Genteng Banyuwangi. The results showed that the implementation of *murabahah bil wakalah* financing in Bank BRI Syariah Unit Genteng Banyuwangi not accordance with Regulation of Bank Indonesia article 9 point d, No. 7/46/PBI/2005 about "Akad Penghimpunan dan Penyelesaian Dana Bagi Bank yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah" mentioned that "Bank represents to the customers (*wakalah*) to purchase the goods, and *Murabahah* Agreement must be done after the goods in principle be belonging to the bank" In next part explanation of this regulation mentioned that *wakalah* contract must be made separately from *murabahah* contract. Meanwhile, Wardhani et al. (2017) conducted a study about the contract of *murabahah bil wakalah* on the saving-loan cooperative and syariah financing (KSPPS) reviewed from justice

and benefit perspective. It was found that the practices of *murabahah* sales applied in KSPPS are not completely conducted purely, because there is limitation of employee and time in a financial institution that the purchasing/providing goods can be represented to the customer called contract of *murabahah bil wakalah*. However, this contract is against the justice perspective in which KSPPS obtain profit that is the institution does not take risk on the *murabahah* object, for the member/candidate of member directly makes transaction to the supplier, and from the benefit point of view, KSPPS gets easiness that it no needs to waste the time to buy goods demanding by the buyer candidate (member/candidate of member), if KSPPS still does the financing in form of *murabahah bil wakalah* financing, there will be more disadvantage than beneficial.

Based on the background and previous studies as described above, it is interesting to discuss the characteristics of *wakalah* contracts in financing with *murabahah* contracts, with the aim of research describe the characteristics of *wakalah* contracts in *murabahah* financing in Islamic banks.

2. METHOD

This research method is normative juridical with a statutory and comparative approach. The research methodology used is doctrinal legal research. Doctrinal legal research is the study of legal rules, principles, concepts or doctrines.

3. DISCUSSION

Maqashid sharia in the *ushul fiqh* dictionary consists of two words, namely *maqashid* which means the goal and sharia is the way to the main source of life. In terms of terminology, what is meant by *maqashid* sharia is the value content that is the goal of the law. Yusuf *al-Qardhawi* provides the definition of *maqashid* sharia as a goal that is the target of particular laws to be realized by humans, whether in the form of prohibitions, orders, permissible, for the people, individuals, and families. Based on

Yusuf *al-Qardhawi's* definition above, he does not distinguish between *maqashid* and legal wisdom, according to him, these purposes can also be referred to as wisdom as the purpose of establishing law, whether required or not, because every law ordered by Allah to his servants must contain wisdom.

Maqashid sharia encourages Islamic jurists to limit the term sharia which directly mentions the objectives of sharia in general. *Shaltut* put forward the boundaries, namely the rules created by Allah, so that humans can guide the regulation of relationships with God, fellow Muslims or non-Muslims, nature and all life (*Shaltut*, 1966:12). Allah prescribes His laws to humans with the aim of providing welfare and benefit for humans. The form of Allah's commandments is contained in the Qur'an and described through the hadith of the Prophet Muhammad. Divine Word is not interpreted rigidly which results in the non-realization of universal benefit values for humans (*Arfa*, 2007:114). Related to this, in its implementation there are five main elements that become the benchmark for *maqashid* sharia, as follows:

- Maintaining religion (hifdz ad-din);
- Nurturing the soul (hifdz an-nafs);
- Maintaining reason (hifdz al'aql);
- Maintaining offspring (hifdz an-nasbi).
- Maintaining property (hifdz al-maal).

Wakalah Terminology

Wakalah is a guarantee, obligation, and power of attorney. Wakalah contract is defined as the delegation of power to another party for the things that are represented to carry out things to the extent that is authorized by the power of attorney. In the construction of a wakalah contract, if all the things that are authorized have been carried out in accordance with the conditions, then all risks related to the execution of the order or power of attorney are fully the responsibility of the power of attorney (*Ibrahim*, 2006:164). Wakalah can also be

interpreted as the submission of the power of attorney to another person in this case the recipient of the power of attorney to do something that is represented as long as the power of attorney is still alive. The purpose of the parties to authorize something to another party with a wakalah contract is because there are conditions in which the giver of the power of attorney cannot continue the task for other reasons that cause the power of attorney to be unable and the other party who is empowered can carry out the duties of the power of attorney, which is the requirement for carrying out these tasks must be based on *syara'*, namely based on the Qur'an and Sunnah.

Mumalah fiqh has divided wakalah into several types, including:

Wakalah mutlaqah, namely the recipient of the power to represent absolutely without any time limit and for all matters of the power of attorney. This type of representation in positive law is known as general power or broad power.

Wakalah Muqayyadah, namely, the recipient of the power of attorney acts for a specific purpose as specifically required by the power of attorney. In positive law, the representative is known as a special cause. In practice, this special power of attorney is given by the Authorizer to the recipient of the special power of attorney to carry out one or more legal actions specified in the letter or deed of power.

Wakalah Amanah, which is a more general representation of muqayyadah but not as complex as mutlawah. In day-to-day legal practice, this power or representative is given by the power of attorney to the recipient of the power of attorney to carry out daily management tasks. This type of wakalah is often used to complete a contract as a bridge over obstacles to the implementation of sharia contracts (Purnamasari, 2011:146).

Contract Wakalah on DSN-MUI Fatwa

As the task of the DSN-MUI in order to meet the demands of the public regarding the need to regulate the exercise of power in sharia *muamalah* transactions, the DSN-MUI Fatwa No. 10/DSN-MUI/IV/2000

concerning *Wakalah* was issued. The fatwa regulates the general provisions regarding *Wakalah* where in the *wakalah* contract there must be an *ijab qabul* which is stated by the parties by showing the will of each party and is binding.

In the Fatwa *Wakalah* also regulates the pillars and conditions of *wakalah*, where if the pillars and conditions are not fulfilled by the parties then the *wakalah* becomes invalid. The pillars and conditions for *wakalah* are divided into three, namely the conditions for muwakkil (who represent), conditions for representatives (who represent) and things that are represented.

The requirement for a representative is that the party as the legal owner who can act on something being represented, is carried out by a person who is a *mukallaf*, namely a person based on *al-Zuhaili's* formulation, namely:

People who are *baligh*

That is, a person who is physically and psychologically human who marks the achievement of a human being in stages can be burdened with responsibility for his actions.

Reasonable person

Namely people who have knowledge of their position in life, and can understand information (As-Saa'di, 2015:320).

People who always fulfill God's promises and do not want to break them.

One who keeps all the commandments of Allah and does not violate them.

People who fear Allah and encourage obedience to Allah.

People who are afraid of bad reckoning to him, because of his bad deeds.

People who are patient in facing trials for the sake of hoping for the pleasure of Allah.

People who always establish prayer.

People who always spend their sustenance.

People who always do good and reject

evil (Tihami, 1998).

The next *muwakkil* requirement is that a *muwakkil* child is a child who has entered an age who has been able to distinguish good and bad, which things are useful and which are not and have understood things that are harmful to him, scholars state that at this age a child has the ability to explore meaning in a problem (Rasjid, 1994:317). As for *mamayyiz* children in relation to the fatwa *wakalah*, they are *mumayyiz* children who within certain limits are things that are beneficial to him such as representing to receive grants, alms or so on.

The requirements for a representative or a representative party have three criteria, namely:

Talk Law

The Compilation of Islamic Law regulates the legal competence of legal entities in article 2, namely for individuals who are considered to have the ability to make legal arrangements if they have reached the minimum age of eighteen years or have been married. For legal entities or not legal entities, to be considered competent if they do not take legal actions that result in bankruptcy based on court decisions that have permanent legal force (*Pasal 2 Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah*). The Civil Code regulates that a person's skills are marked by the entry of adulthood, namely people who have entered the age of twenty-one and/or are married (*Pasal 1320 jo 330 KUH Perdata*).

Can carry out the tasks assigned to him.

As regulated in Article 463 of the Compilation of Islamic Law, it is obligatory that the recipient of the power of attorney must have the mind and the ability to carry out any tasks assigned to him to carry out the instructions of the authorizer (*Pasal 463 Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2008 tentang Kompilasi Hukum Ekonomi*

Syariah).

A representative is a person who is given a mandate.

The *Wakalah* Fatwa also regulates the matters being represented, namely:

Clearly known by the person who represents

The Authorizer is required to provide clear instructions on the transactions to be carried out by the proxy or the representative party. Based on the Compilation of Islamic Law, it stipulates that transactions that can be carried out by the power of attorney or representative in connection with grants, loans, pledges, deposits, borrowing, Cooperation and Cooperation in capital must be relied on by the power of attorney to fulfill the validity of the transaction (*Pasal 463 Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah*). In the event that the recipient of the power of attorney is given absolute power to carry out legal actions, the recipient of the power of attorney can carry out legal actions absolutely, so also if the recipient of the power of attorney is only given the power to carry out legal actions on a limited basis, then the recipient of the power of attorney can only carry out legal actions on a limited basis (*Pasal 472 jo. 473 Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah*).

Does not conflict with Islamic sharia.

Can be represented according to Islamic sharia.

Wakalah Based on the Civil Code

In essence, *wakalah* is a form of submission from the giver of the power to another person, in this case the recipient of the power of attorney to do something that is represented as long as the power of attorney is still alive (Irma Devitas Purnamasari, 2011). The definition of *wakalah* has a similar arrangement in the Civil Code in Article 1792 of the Civil Code which stipulates that "The grant of power

of attorney is an agreement whereby one person gives power to another person, who accepts it for and on behalf of carrying out an affair".

The elements of Article 1792 can be understood that in the granting of power there are two parties in it, namely:

Authorizer;

The power of attorney who is given an order to carry out instructions or do something for and on behalf of the power of attorney.

The characteristics of the power of attorney granted from the power of attorney to the recipient of the power of attorney can occur if:

The power of attorney delegates or represents to the recipient of the power of attorney to manage his interests, in accordance with the functions and authorities specified in the power of attorney.

Thus, the full power of attorney acts on behalf of the authorizing third party for and on behalf of the power of attorney.

The power of attorney is responsible for all acts of the power of attorney, as long as the actions carried out by the power of attorney do not exceed the authority given by the power of attorney (Harahap, 2012:2).

The power of attorney agreement has the following characteristics:

The direct power of attorney has the capacity as a representative of the power of attorney.

Power of attorney is consensual, these conditions mean:

The legal relationship of power of attorney, there must be a power of attorney and a power of attorney.

The legal relationship as outlined in the power of attorney binds the giver and the recipient of the power of attorney.

The granting of power of attorney must be carried out based on the statement of the will of the giver and the recipient of the power of attorney (Harahap, 2012).

The power of attorney is valid to bind the power of attorney with limitations, including:

Limited to the authority or orders given by the power of attorney.

In the event that the power of attorney does not exceed the limits of the order or authority, the responsibility of the power of attorney is limited to actions that are in accordance with the mandate received. If the power of attorney exceeds the limits of the mandate received, in the event of a loss or error, then the condition becomes the responsibility of the power of attorney as regulated in Article 1806 of the Civil Code.

The Civil Code regulates events that result in the termination of the power of attorney as regulated in articles 1813 to 1819 of the Civil Code, namely:

The giver of the cause withdraws his power unilaterally

The recipient of the cause relinquishes his power.

One of the parties dies, under custody or bankruptcy.

The power of attorney is a woman and performs the marriage.

The provisions of the Civil Code which regulates the abolition of power of attorney if a woman who gives or receives power has a husband, has been abolished based on jurisprudence, which jurisprudence stipulates that a married woman is a legally competent party (Subekti, 1992:151). The giver of the power of attorney can withdraw his power which if this condition occurs, the recipient of the power of attorney no longer has rights to the object being empowered (*Pasal 1814 KUH Perdata*). Withdrawal of power of attorney by the power of attorney can be carried out without a time limit, but with reasonable notice to the recipient of the power of attorney and if the recipient of the power of attorney refuses to hand over his power of attorney, the court can force him to surrender what has been given to him, to

the power of attorney. Withdrawal of power of attorney cannot be submitted to a third party who does not know about the withdrawal, this condition does not reduce the claim of the attorney to the power of attorney (*Pasal 1815 KUH Perdata*). The explanations related to the withdrawal of power as described above, can be concluded, among others:

Power of attorney can end at any time if there is a withdrawal of power by the giver of the power of attorney and if necessary, it can be done by force.

Withdrawal of power of attorney must be notified to the recipient of the power of attorney.

If the power of attorney dies, the heirs must notify the power of attorney immediately, and take necessary actions for the benefit of the power of attorney.

The abolition of power can occur after the expiration of the power of attorney.

Wakalah Agreement Based on the Regulation of the Financial Services Authority.

Referring to the function of OJK as an institution that supervises and regulates Islamic banking, including regulating Islamic banking products that can be distributed to the public, OJK also regulates the mechanism for implementing wakalah in Islamic commercial banks. Based on the Financial Services Authority Regulation Number 13/POJK.03/2021 concerning the Operation of Commercial Bank Products, it stipulates that wakalah is used as a separate product and wakalah as a complementary contract, namely: (Peraturan Otoritas Jasa Keuangan Nomor 13/POJK.03/2021 tentang Penyelenggaraan Produk Bank Umum).

In separate products, namely:

Sharia Factoring Products.

The contract used is *walakah bil ujarah*, with the scheme of the customer representing the bank to manage sales documents and then collecting receivables from the debtor or other party appointed

by the debtor. The bank becomes the representative of the customer to collect (collection) to the debtor or other party appointed by the debtor to pay. The bank and the customer put the financing agreement in a written agreement and it can also be done orally and the actions/actions are documented and can be done electronically based on the agreement of the parties in accordance with Sharia Principles and the provisions of laws and regulations. Banks can obtain *ujrah* or profits based on customer receivable collection services based on *wakalah* contracts.

Issuance, Confirmation, and Financing by Letter of Credit/Domestic Documentary Letter of Credit.

Provision of one or several services which include the issuance, confirmation, and financing of L/C or Domestic L/C based on the written request of the applicant (applicant) which binds the issuing bank to:

make payments to the beneficiary or his order, or accept and pay the draft drawn by the beneficiary;

authorize other Banks to make payments to the beneficiary, accept and pay the draft drawn by the beneficiary;

authorize other Banks to negotiate drafts drawn by the beneficiary, upon the submission of documents as long as the terms and conditions of the L/C or Domestic L/C are met;

request confirmation from the guarantor bank (confirming bank) on the issued L/C or SKBDN; and/or

to finance the issued L/C or SKBDN.

Referring to the bank's activities as a customer representative as above, the bank can use the *wakalah bil ujarah* contract, to get *ujrah*/fees/profits from customers.

Syndicated Financing

The provision of co-financing by a group of financiers to one customer, which in general is too large a financing amount to be provided by only one financier. In a

syndicated financing agreement, the Bank may act among others as arranger, underwriter, agent, or participant. The *wakalah* contract scheme used is the facility provider/creditor/participant granting power to the arranger, underwriter or agent to carry out the matters agreed in the collective agreement. For matters represented by the arranger, underwriter and agent as per the mutual agreement, the arranger, underwriter and agent are entitled to an *ujrah*/fee.

As a Complementary to Sharia Contract Transactions

Wakalah contract is used as a document that includes the power of attorney from the Bank to the Customer to purchase/acquire assets with the following conditions:

In the context of purchasing or procuring or acquiring movable or immovable assets prior to a *murabahah* or *musyarakah mutanaqisah* contract, and refinancing between the bank and the customer.

In order to procure services prior to the multi-service *Ijarah* contract between the bank and the customer.

In the context of channeling financing with a Cooperation scheme between a Bank and a financial institution where the financial institution as the recipient of the funds only acts as a manager and obtains a reward or fee from the management of these funds and the risks arising from this activity rest with the Bank as the party that owns the funds. In this channel financing mechanism, the *wakalah* scheme is carried out where the bank gives power to financial institutions to manage end users.

Wakalah Agreement on Murabahah Financing in Indonesia

The use of *wakalah* or power contracts in the context of fulfilling *murabahah* objects is allowed based on the DSN-MUI Fatwa concerning *Murabahah*. In the *Murabahah* Fatwa, the general provisions

of *murabahah* in Islamic banks stipulate that if the bank wishes to represent the customer to buy goods from a third party, then the *murabahah* sale and purchase contract must be carried out after the goods in principle become the property of the bank (*Ketentuan Umum Murabahah pada Bank Syariah Fatwa DSN-Majelis Ulama Indonesia Nomor 04/DSN-MUI/IV/2000 tentang Murabahah*). The use of *wakalah* contracts in the context of procuring *murabahah* objects is also accommodated by OJK based on Financial Services Authority Regulation Number 13/POJK.03/2021 concerning the Operation of Commercial Bank Products, where in financing products with *murabahah* contracts can be started with *wakalah* contracts in order to fulfill the *murabahah* object (*Peraturan Otoritas Jasa Keuangan Nomor 13/POJK.03/2021 tentang Penyelenggaraan Produk Bank Umum*). The practice of financing transactions at Islamic banks in Indonesia still uses *wakalah* contracts as a bridge for the procurement of goods or *murabahah* objects, considering that banks do not fully know the specifications of the *murabahah* object desired by the customer, therefore the bank gives *wakalah* or power of attorney to the customer to purchase the *murabahah* object as a representative from the bank, then the object is handed over to the bank for sale based on the *murabahah* principle to the customer by stating the bank's profit.

The *wakalah* used in the transaction for the procurement of *murabahah* objects is pure *wakalah*, not *wakalah bil ujah* or with compensation, thus Islamic banks do not provide compensation to customers for the implementation of the *wakalah* or power of attorney. The characteristics of *wakalah* in sharia *murabahah* are *al-Wakalah al-Muqayyadah* which is *wakalah* or power of attorney for certain things that are authorized by the bank to customers and customers as representatives including as *bil-shira* representatives, namely representatives who are given the task of buying goods on behalf of the bank

(Anshori, 2009:88).

The use of *wakalah* for the procurement of *murabahah* objects must be avoided from *ta'lluq* (Jazuli, 2002:33). *Ta'lluq* Linguistically, it is a conditional sale and purchase (Jazuli, 2002). The reason that causes buying and selling with *ta'alluq* to be damaged is due to the presence of *usur gharar* or ambiguity for the seller and the buyer. The ambiguity in question is regarding the continuity of the sale and purchase binding which must wait for other elements to be determined. With the requirement of a certain element, the parties do not know under what conditions the transaction can be carried out. Thus, the element *gharar* lies in the implementation of the sale and purchase, namely the time of execution of the sale and purchase and from the willingness of the legal subject at the time of the occurrence of the required things (Al-Mukhtar & Abidin, 2005:160). In terms of *wakalah* to *murabahah*, *wakalah* is prohibited from being a condition for the validity or validity of a *murabahah* transaction, because the two contracts stand independently and do not affect each other.

In essence, *murabahah* financing is the provision of funds or equivalent claims, in the form of buying and selling transactions in the form of *murabahah* receivables based on sharia principles. In practice, Islamic commercial banks issue *wakalah* contracts to customers, in which the customer acts on behalf of the Islamic commercial bank with the aim of making a purchase first from the supplier or initial owner, after first negotiating the price of goods, specifications, method and place of payment. Goods purchased by customers based on *wakalah* contracts will then be resold by sharia commercial banks to customers based on sharia principles with *murabahah* contracts (Purnamasari, 2017:48). The granting of *wakalah* to customers may not eliminate the two legal relationships that underlie Islamic commercial banks to sell goods to customers (Sjahdeini, 2014:1014). The

Compilation of Sharia Economic Law stipulates that if one party appoints another party as the beneficiary to purchase a certain item, he or she may not purchase the item for himself and if after purchasing the item, the proxy says that he has purchased the item for himself, then the item remains belong to the power of attorney (*Pasal 480 jo Pasal 481 ayat (1) Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah*). From this arrangement, it can be obtained information that even though the customer purchases for his interests by not including the purchase on behalf of the bank, then legally the goods remain the property of the bank, so that the bank can resell the *murabahah* object to the customer by including the nominal profit of the sharia commercial bank in the contract (Herlambang, Azyani, Farras, & Amin, 2019). In the *wakalah* contract, Islamic commercial banks also give power and authority to customers to sign all buying and selling documents including but not limited to sale and purchase deeds, receipts and appear before authorized government officials in the context of buying and selling (Purnamasari, 2011:50).

4. CONCLUSION

Based on the description above, it can be concluded that 1) *Wakalah* contract which is a formal legal grant of power is regulated in Law No. 21 of 2008 concerning Sharia Banking, the Civil Code, DSN-MUI Fatwa No. 10/DSN-MUI/IV/2000 concerning *Wakalah*, and Regulations The Financial Services Authority Number 13/POJK.03/2021 concerning the Operation of Commercial Bank Products, which has a definition in the form of a document delegating power to other parties on matters that are represented to carry out matters to the extent authorized by the attorney. 2) The use of *wakalah* contracts in the context of fulfilling *murabahah* objects in Indonesia is allowed based on the DSN-MUI Fatwa on *Murabaha* and banking regulations. Islamic commercial

banks in practice issue *wakalah* contracts to customers, in which the customer acts on behalf of Islamic commercial banks with the aim of making purchases first. First from the supplier or original owner, after first negotiating the price of goods, specifications, method and place of payment. Goods purchased by customers based on *wakalah* contracts will then be resold by sharia commercial banks to customers based on sharia principles with *murabahah* contracts.

Based on the conclusions, it can be suggested that the Financial Services Authority should be able to issue arrangements that provide limits on the things that can be authorized based on the *Wakalah* Agreement, especially the *Wakalah* Agreement used for the *Murabahah* Contract.

REFERENCES

- Al-Mukhtar, A.-D., & Abidin, I. (2005). *Amin Adh-Dhahir, al-Gharar fil 'Uqud wa Atsaruhu fi at-Thatbiqat al-Mu'ashirah, translated by Saptono Budi Satriyo and Fauziah, Transaksi dan Etika Bisnis Islam*. Jakarta: Visi Insani Publishing.
- Anshori, Ab. G. (2009). *Lembaga Kenotariatan Indonesia Perspektif Hukum dan Etika*. Yogyakarta: UII Press.A
- Antonio, M. S. (2008). *Bank Syariah dari Teori ke Praktik*. Jakarta: Gema Insani.
- Arfa, F. A. (2007). *Filsafat Hukum Islam*. Solo: Cipta Libra.
- As-Saa'di, A. bin N. (2015). *Tafsir al-Karim ar-Rahman fi Tafsir Kalam Al-mannan*. Jakarta: Darul Haq.
- Harahap, M. Y. (2012). *Hukum Acara Perdata*. Jakarta: Sinar Graphic.
- Herlambang, Y., Azyani, S., Farras, Y. E. I., & Amin, M. F. (2019). Konsep Keadilan bagi Nasabah dalam Penerapan Akad Murabahah Bil Wakalah di Bank Syari'ah. *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah*, 3(2), 163–180. doi:10.29313/amwaluna.v3i2.4297
- Ibrahim, A. W. (2006). *Banking Cards Syariah Kartu Kredit dan Debit dalam Perspektif Fiqih*. Jakarta: PT Raja Grafindo Persada.
- Jannah, N. W. (2015). The Implementation of Murabahah bil Wakalah Financing in BRI Syariah Unit Genteng Banyuwangi. *JURISDICTIE*, 6(1), 78. doi:10.18860/j.v6i1.4091
- Jazuli, H. (2002). *Kitab Undang-undang Hukum Perdata Islam, Translation of Majallah Al-Ahkam Al-Adliyah*. Bandung: Qibla Press.
- Karim, H. (2002). *Fiqh Muamalah*. Jakarta: Raja Grafindo Persada.
- Muhammad. (2003). *Sistem & Prosedur Operasional Bank Syariah*. Yogyakarta: UII Press.
- Purnamasari, Irma Devita. (2017). *Akad Syariah*. Jakarta: PT Mizan Pustaka.
- Purnamasari, Irma Devitas. (2011). *Akad Syariah*. Bandung: PT Mizan Pustaka.
- Rasjid, S. (1994). *Fiqh Islam*. Bandung: Sinar Baru.
- Shaltut, M. (1966). *Islam, Aqidah wa Shari'ah*.
- Sjahdeini, S. R. (2014). *Perbankan Syariah Produk-produk dan Aspek Aspek Hukumnya*. Jakarta: Prenadamedia Group.
- Subekti. (1992). *Aneka Perjanjian*. Bandung: Image Aditya Bakti.
- Surat Edaran Otoritas Jasa Keuangan Nomor 36/SEOJK.03/2015 tentang Produk dan Aktivitas Bank Syariah dan Unit Usaha Syariah*. 37. (n.d.).
- Tihami, H. M. A. (1998). Taklif dan Mukallaf Menurut Al-Syeikh Muhammad Nawawi Al-Bantani. *ALQALAM*, 14(74), 75. doi:10.32678/alqalam.v14i74.439
- Wardhani, N. E., Sihabudin, Ruba'i, M., & Luth, T. (2017). The Contract of Murabahah Bil Wakalah on The Saving-Loan Cooperative and Syariah Financing (KSPPS) Reviewed from Justice and Benefit Perspective. *Journal of Law, Policy and Globalization*, 64, 85–93. Retrieved from <https://www.iiste.org/Journals/index.php/JLPG/article/view/39534/>
- Ketentuan Umum Murabahah pada Bank Syariah Fatwa DSN-Majelis Ulama Indonesia Nomor 04/DSN-MUI/IV/2000 tentang Murabahah.*
- Ketentuan Umum Murabahah pada Bank Syariah Nomor 9, Fatwa Dewan Syariah Nasional – MUI No. 04/DSN-MUI/IV/2000 tentang Murabahah.*
- Pasal 1 ayat (12) Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah.*
- Pasal 1320 jo 330 KUH Perdata.*
- Pasal 1814 KUH Perdata.*
- Pasal 1815 KUH Perdata.*
- Pasal 19 ayat (1) huruf d Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah.*
- Pasal 2, Pasal 3, dan Pasal 4 ayat (1) Undang-Undang Nomor 21 Tahun 2008 tentang Perbankan Syariah.*

Pasal 2 Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah.

Pasal 463 Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah.

Pasal 472 jo. 473 Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah.

Pasal 480 jo Pasal 481 ayat (1) Peraturan Mahkamah Agung Republik Indonesia Nomor 2 Tahun 2008 tentang Kompilasi Hukum Ekonomi Syariah.

Peraturan Otoritas Jasa Keuangan Nomor 13/POJK.03/2021 tentang Penyelenggaraan Produk Bank Umum.