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Prudential Principles in Murabaha Financing in Sharia Banking During the Covid-19 Pandemic

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Abstract

The outbreak of coronavirus disease 2019 (covid-19) globally has had a direct or indirect impact on the performance and capacity of customers (debtors) in fulfilling their obligations to financing payments, which impact on performance and capacity of debtors and will increase the risk of *Murabaha* financing which has the potential to disrupt banking performance and financial system stability so that it can affect the community's economic growth as a countercyclical. This study aims to determine the application of the prudential principle in *Murabaha* financing during the Covid-19 pandemic, using normative juridical research methods, and primary and secondary legal materials as well as primary data as supporting data. The legal research materials used are primary and secondary legal sources. Data was analyzed descriptively that finally was concluded deductively. The results of the study show that in applying the prudential principle, Islamic banks are required to apply an assessment of prospective customers based on the 3C principles (Character, Capacity, Collateral), namely an assessment of the character of the prospective customer, business feasibility, and collateral submitted to Islamic banks. Furthermore, a *Murabah*a financing restructuring program is needed in the form of restructuring, rescheduling, and settlement of financing payments through the execution of customer assets. It is recommended that in *Murabaha* financing during the Covid-19 pandemic, *Murabaha* Product Standards and their alignment with fatwas, sharia standards, and Compilation of Sharia Economic Law are needed including alignment with Financial Services Authority Regulation (POJK) No. 11/POJK.03/2020, PJOK Number 48/POJK.03/2020, and POJK No. 17 /POJK.03/2021 concerning the Second Amendment to POJK No. 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of Coronavirus Disease 2019. In addition, it needs a good and effective risk management system, relaxation of financing according to the conditions of customers affected by the Covid-19 outbreak, and submission of relaxation requests can be made without physical customer contact.

Keywords

Prudential Principles, Murabahah Financing, Sharia Banking, the Covid-19 Pandemic

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A. Introduction

Islamic Sharia is a comprehensive rule. Comprehensive can be interpreted that sharia regulates humanity in various fields, including the areas of *'ubudiyah* and *muamalat.*[1] Imtiaz Pervez stated that:[2]

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[1]Ibada *'ubudiyah* is any worship that is done because it is ordered by Allah (Glorious and Exalted is He), while *muamalah* is an act that every Muslim has the choice whether to do or not as he wishes, as long as it does not contradict with the rules set out in the Qur'an an and as-Sunnah

[2]Imtiaz Pervez *in* J. Michael Taylor, 2003, "Islamic Banking-The Feasibility of Establishing an Islamic Bank in The United States", *American Business Law Journal,* Winter, 2003, p. 387.

> *[Islam] is a comprehensive way of life, religious and secular; it is a set of beliefs and a way of worship; it is a vast and integrated system of laws; it is a culture and a civilization; it is an economic system and commercial norm; it is a polity and a method of governance; it is a society and family conduct; it prescribes for inheritance and divorce, dress and etiquette, food and personal hygiene. It is spiritual and human totality; thus worldly and other-worldly.*

Islamic economics (muamalat in the narrow sense) regulates humans in carrying out their economic activities so that they are following sharia principles. Sharia principles include 1). Principles of non-usury Banking; 2). Principles of Halal and not Haram Commerce; 3). The principle of the consent of the parties in the contract; 4). The principle of trustful, honest, and responsible fund management.[3] These principles are known as the principles of Islamic economics.

Islamic economic principles can be realized in various Islamic banking products, both in transactions and in agreements. Based on this principle, Islamic banking is expected to carry out its business activities purely and consistently. Thus, the rules in sharia economic law can be implemented based on the Koran and as-Sunnah.

Sharia banking in carrying out its business activities is based on sharia principles. Sharia principles according to Article 1 point (12), Law no. 21 of 2008 concerning Sharia Banking (hereinafter the Sharia Banking Act), Sharia principles are the principles of Islamic law in banking activities based on fatwas issued by institutions that have the authority to issue fatwas in the field of sharia. With these principles, sharia banking can carry out business activities based on the fatwa that has been determined by the DSN-MUI.

Business activities based on sharia principles are manifested in various types of sharia banking financing products. According to Article 1 point (25) of the Sharia Banking Law, financing is the provision of funds or claims equivalent to it in the form of profit-sharing transactions of *mudharaba* and *musyarakah*, leasing in the form of *ijarah* or leasing in the form of *ijarah muntahiya bittamlik*, buying and selling in the form of *murabaha, salam* and *istisna* receivables, lending and borrowing in the form of *qardh* receivables, and leasing services in the form of *ijarah* for multi-service transactions.

According to various kinds of Islamic banking financing products, as described above, *murabaha* is one of the most dominant financings applied in the practices of Islamic banking.[4] The dominance of this financing is not only applied in countries that adhere to a dual banking system, such as Indonesia and Malaysia, but also in other countries that adhere to a fully Islamic banking system, such as Sudan.[5]

Murabaha is one of the financing forms. In channeling funds to customers, Islamic banks act carefully. It is considered that the risk in *murabaha* financing is prone to occur.

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[3]Jafril Khalil, 2002. “Prinsip Syari’ah Dalam Perbankan,” *Jurnal Hukum Bisnis,* Vol 20, Agustus-September, Yayasan Pengembangan Hukum Bisnis, Jakarta, p. 47.

[4]One of the advantages of Islamic banking is the profit-sharing system, so commonly many people label Islamic banks as profit-sharing banks, but in reality, financing in Islamic banking is not dominated by *mudharaba* financing with the concept of profit-sharing but is more dominated by *murabaha* financing. See, Yenti Afrida, Analisis Pembiayaan *Murabahah* di Perbankan Syariah, *JEBI (Jurnal Ekonomi dan Bisnis Islam)*, Volume 1, Number 2, July-December 2016, p. 155.

[5]Hirsanuddin, 2008. *Hukum Perbankan Syariah di Indonesia: Pembiayaan Bisnis Dengan Prinsip Kemitraan*, Cet. Pertama, Yogyakarta: Genta Press, p. 161.

For example, customers are unable to do arrears payments on time, so Islamic banks must take steps to anticipate this risk. Therefore, the prudential principle is one of the principles of Islamic banking (Article 2 of the Sharia Banking Law) and in carrying out its business activities it is obligatory to apply prudential principles (Article 35 (1) of the Islamic Banking Act). The prudential principle is one of the principles used by banks to avoid these risks.

The application of prudential principles needs to be considered in a broad context, both in terms of Islamic law as part of Islamic banking and positive law as part of its application in Indonesia, as well as from various references to accountability from an economic standpoint. Therefore, this study aims to highlight how the prudential principle is applied in providing *murabaha* financing to Islamic banks in Indonesia.

B. Discussion

1. *Prudential Principle* in Providing Murabaha Financing at Islamic Banks

The principles of sound finance that must be guided by the bank include: 1. Banks are not allowed to provide financing without a written agreement. 2. Banks are not allowed to provide financing to businesses that are prone to bankruptcy risk 3. Banks are not permitted to provide financing for the purchase of shares and capital for buying and selling shares or, 4. Providing financing that exceeds the *legal lending limit*.[6]

The prudential principle is the principle that states that in carrying out its functions and business activities, a bank must be prudent in order to protect public funds entrusted to it.[7] This is stated in Article 2 of the Sharia Banking Act that Sharia Banking in carrying out its business activities is based on Sharia Principles, economic democracy, and the prudential principle.[8]

Likewise, Islamic banks when providing financing facilities to customers must pay attention to the ability of prospective customers and their confidence in paying off the financing they have provided. This is as stipulated in Article 23 paragraph (1), namely Sharia Banks and/or UUS must have confidence in the willingness and ability of prospective customers who will receive the facility, to pay off all obligations on time, before Sharia Banks and/or UUS distribute funds to the customer. Furthermore, in Article 23 paragraph (2) it is stated that in order to gain the confidence referred to in paragraph (1), Sharia Banks and/or UUS are required to carry out a thorough assessment of the character, capabilities, capital, collateral, and business prospects of prospective Customer as the Recipients of Facilities.

Assessment of the customer's confidence in *murabaha* financing and assessment of the customer's ability to repay debt must be carried out carefully so that it is right on

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[6] Muhammad Djumhana, *"Hukum Perbankan Indonesia"*, Citra Aditya Bakti, Bandung, 2000, p. 293.

[7] Rachmadi Usman, 2021, *Aspek-aspek Hukum Perbankan di Indonesia*, Gramedia Pustaka Utama, Jakarta,p. 18.

[8] Article 2 Constitution of the Republic of Indonesia Number 21 the Year 2008 concerning Sharia Banking.

target. One of the assessments that can be carried out is using a family approach or the history of prospective customers so that the customer is clearly identified.

There is trust in Islamic banks in providing *murabaha* financing to customers with the objective of enforcing the prudential principle so that banks are always in good condition, liquid, solvent, and profitable. With the implementation of the prudential principle, it is hoped that the level of public trust in banking will incline so that people are willing and not hesitate to deposit their funds in the bank.[9] In addition, the application of the prudential principle is one of the principles used by Islamic banks to avoid risks in *murabaha* financing.[10]

The application of the prudential principle to Islamic banks is by applying an assessment of prospective customers based on the 3C principles *(Character, Capacity, Collateral)*, namely an assessment of the character of prospective *murabaha* financing customers, business capability or feasibility, and collateral submitted to Islamic banks. The application of the prudential principle is to find out the obstacles, both the obstacles from external Islamic banks and the obstacles from internal parties of Islamic banks.

Islamic banks in distributing *murabaha* financing to customers must know the customer's ability to fulfill their obligations (paying off debts) so that Islamic banks must know the financial history and ability of customers to carry out the obligations of paying off debts to Islamic banks. Knowledge of the customer's financial history can be done with a familial approach.

Furthermore, Islamic banks use a *murabaha* financing restructuring program in the form of restructuring, rescheduling (rescheduling), and settlement of financing payments through asset execution (collateral sales) of customers. Thus, the application of the prudential principle properly in the provision of *murabaha* financing can minimize the risk of financing, in order to create a healthy, strong, and efficient Islamic bank in accordance with legislative provisions. Therefore, the application of the prudential principle does not only give Islamic banks confidence in providing *murabaha* financing to customers but also the demands to avoid the risk of loss for Islamic banks.

2. Efforts to Apply the Prudential Principle in Providing *Murabaha* Financing to Islamic Banks during the Covid-19 Pandemic

Sharia financing is the funding provision facilities to meet the needs of parties who need funds (deficit units), where Islamic banks can have a position either as a *shahibul maal* (funder) or as a *mudharib* (manager), or as a liaison (intermediary) between customers and users of funds.

Murabaha financing implemented during the Covid-19 outbreak must be carried out more carefully because the risk of paying off debt to Islamic banks is greater than in the period when Covid did not occur. It was influenced by the decline in income and business

[9] Sjadeini, Sutan Remy. 2006. Hak Jaminan dan Kepailitan: Yayasan Pengembangan Hukum Bisnis. Jurnal Hukum Bisnis. Volume XI; (53-54).

[10] Faisal, Prinsip Kehati-hatian Bank Syariah Dalam Pengalihan Pengadaan Barang *Murabahah* Kepada Pihak Ketiga, *Jurnal MIMBAR HUKUM*, *Edisi Khusus*, Pp. 99-115, December 2012, ISSN 2086-499 X

activities carried out by customers, so it needs to be done more carefully. Therefore, this financing must be based on policies issued by the Financial Services Authority.

Republic of Indonesia Financial Services Authority has Regulation Number 48/POJK.03/2020 concerning Amendment to Financial Services Authority Regulation Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Corona Virus Disease 2019. Article 2 Paragraph (1) states that banks can apply policies that support economic growth stimulus to: a. debtors affected by the spread of coronavirus disease 2019 (COVID-19) including debtors of micro, small and medium enterprises; and b. BUK, BUS, or UUS as a result of the spread of coronavirus disease 2019 (COVID-19). Referring to these provisions, Islamic banks in providing *murabaha* financing can implement policies that support economic growth for customers, both customers who carry out business activities that are micro, small, and medium as well as for customers who have an impact due to the spread of Covid-19.

Islamic banks can adopt policies for customers who use *murabaha* financing facilities affected by the spread of coronavirus disease 2019 (COVID-19), including micro, small, and medium business debtors including; a. determination of asset quality; and b. credit or financing restructuring.[11] Referring to these provisions, Islamic banks must apply the prudential principle in determining the quality of customer assets so that customer assets must have a selling value and be able to cover the total value of *murabaha* financing provided to customers. In addition, Islamic banks can provide financing restructuring facilities to customers so that customers are able to carry out their obligations to Islamic banks. Restructuring of *murabaha* financing in Islamic banks is carried out by rescheduling, reconditioning, and restructuring by taking into account the prudential principle, meaning that Islamic banks consider various aspects, by minimizing risks and not harming *murabaha* financing customers so that both parties are benefiting. In addition, paying attention to the basic principles of Islamic economics, namely: *usur*y, *gharar*, and *maisir* as a form of prudence in Islamic law, as well as the application of getting to know your customer principles, sharia principles, and sharia accounting principles, is an integral part of the prudential principle. The application of these principles in financing restructuring is a form of sharia bank compliance with applicable laws and regulations.[12]

Implementation of the policy as stated in Article 2 paragraph (2) POJK No. 48 /POJK.03/2020 is with the observance of the implementation of risk management as stipulated in the Financial Services Authority regulations regarding the implementation of bank risk management, namely POJK Number 65 /POJK.03/2016 concerning Implementation of Risk Management for Sharia Commercial Banks and Sharia Business Units. For example, in implementing Risk Management, Sharia banks must comply with

[11] See, Article 2 Verse (2) Republic of Indonesia Financial Services Authority Regulations Number 48 /POJK.03/2020 concerning the Amendment of Financial Services Authority Regulations Number 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Corona Virus Disease 2019.

[12] Faisal, Retrukturisasi Pembiayaan Murabahah Dalam Mendukung Manajemen Risiko Sebagai Implementasi Prudensial Principle Pada Bank Syariah Di Indonesia, *Jurnal Dinamika Hukum*, Vol 11, No 3 (2011), Faculty of Law, Universitas Jenderal Sudirman, Pp. 480-489

the objectives, business policies, size, and complexity of the business as well as the capabilities of the Bank.[13]

In addition, the risk management implementation policy carried out during the COVID-19 pandemic determines other policies as referred to in paragraph (3) at least *first,* has guidelines for determining debtors who are affected by the spread of coronavirus disease 2019 (COVID-19) namely; a. debtor criteria determined to be affected by coronavirus disease 2019 (COVID-19); and b. sectors affected by coronavirus disease 2019 (COVID-19); *second*, assess debtors who can survive the impact of coronavirus disease 2019 (COVID-19) and still have business prospects so that they can be given credit or financing restructuring according to Financial Services Authority Regulations; *third,* forming reserves for debtors who are no longer able to survive after credit or financing restructuring is carried out in accordance with this Financial Services Authority Regulation; *fourth,* considering capital security and taking into account the additional formation of reserves to anticipate potential deterioration in credit quality or restructured financing if the Bank will distribute dividends; and *fifth*, conducting periodic resilience tests against potential deterioration in the quality of credit or restructured financing and its impact on the Bank's liquidity and capital. All policies for BUK, BUS, or UUS as a result of the spread of coronavirus disease 2019 (COVID-19) including liquidity and capital policies must obtain approval from the Financial Services Authority.

The implementation of *muarabaha* financing restructuring must be carried out properly and determined smoothly since the restructuring was carried out. This means that business activities and customer obligations to the bank will run smoothly, for customers affected by the spread of coronavirus disease 2019 (COVID-19) as well as for debtors with micro, small and medium business. Application of *murabaha* financing restructuring accounting is for financing at Islamic Rural Banks (BPRS). Whereas *murabaha* financing for restructured Islamic Commercial Banks (BUS) or Sharia Business Units (UUS) may be excluded from the calculation of low-quality assets in assessing the soundness of a bank, by adjusting the financing restructuring approval mechanism but still based on the prudential principle. The restructuring approval mechanism remains guided by the internal Bank as a unit with guidelines for determining debtors affected by the spread of coronavirus disease 2019 (COVID-19) as referred to in Article 2 paragraph (4) letter a.

C. Conclusion and Suggestion

1. Conclusion

The application of the prudential principle to Islamic banks in *murabaha* financing requires the application of an assessment of prospective customers based on the 3C principles (Character, Capacity, Collateral), namely an assessment of the character of prospective *murabahah* financing customers, business ability, or feasibility, and collateral submitted to Islamic banks. An approach to financial history and the customer's ability to carry out payment obligations to Islamic banks is needed so that a family approach is also needed. In addition, a *murabaha* financing restructuring

[13] See Article 4 Financial Services Authority Regulations Number 65 /POJK.03/2016 concerning Implementation of Risk Management for Sharia Commercial Banks and Sharia Business Units.

program in the form of restructuring, rescheduling, and settlement of financing payments through asset execution (collateral sales) of customers is applied. Thus, the application of the prudential principle properly in the provision of *murabaha* financing can minimize financing risks, in order to create a healthy, strong, and efficient Islamic bank in accordance with legislative provisions.

2. Suggestion

a. It is recommended that in channeling funds in the form of *murabaha* financing during the Covid-19 pandemic, it is necessary to apply the *Murabaha* Product Standards compiled by the Sharia Banking Department of the Financial Services Authority, align the Standard Operating Procedures (SOP) for *murabaha* products with fatwas, sharia standards, and laws and regulations, as well as sharia provisions in the Compilation of Sharia Economic Law (KHES).
b. It required implementation of risk management at least includes: a. active supervision of the board of commissioners, directors, and sharia supervisory board; b. adequacy of policies, procedures, and determination of risk management limits; c. adequacy of the processes of identification, measurement, monitoring, and risk control as well as risk management information systems; and d. a comprehensive internal control system for the condition of customer income which has decreased significantly due to the impact of the Covid-19 pandemic. In addition, financing relaxation is needed in accordance with the economic sector, criteria, and conditions of customers affected by the Covid-19 outbreak. Then, it is necessary to provide services to customers without having to come to an Islamic bank to avoid physical contact, so it needs alignment with the Financial Services Authority Regulation (POJK) No. 11 /POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Coronavirus Disease 2019, and POJK No. 17 /POJK.03/2021 concerning the Second Amendment to POJK No. 11/POJK.03/2020 concerning National Economic Stimulus as a Countercyclical Policy for the Impact of the Spread of Coronavirus Disease 2019.

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