

The Legal Certainty of *Murabahah* Contracts in Buying a House

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Abstract. *The purpose of this research is to analyze: 1) Implementation of Murabahah contract in buying and selling houses through the Himalayan Puncak Abadi Sharia Cooperative in Palangka Raya City. 2). Legal certainty of Murabahah contracts in buying and selling houses through the Himalayan Puncak Abadi Sharia Cooperative in Palangka Raya City. The approach method used in discussing this research problem is a sociological juridical approach. The research specifications used are descriptive analytical research. This type of data uses primary data and secondary data. The data analysis method used in this research is qualitative analysis. The results of the study were concluded: 1) The implementation of the Murabahah contract in buying and selling houses through the Himalayan Puncak Abadi Sharia Cooperative in Palangka Raya City was started by using the principle of 5C financing analysis and went through several stages. namely the submission of an application by completing the required documents, checking the completeness of the documents, analyzing the feasibility of the financing proposal, approval or rejection of the results of the analysis through the financing committee binding with a notary deed. The Himalayan Puncak Abadi Sharia Cooperative in Palangka Raya City in resolving problematic financing can be overcome by means of qadhi, tahkim, and al-islah. 2) The legal certainty of the Murabahah contract in the sale and purchase of houses through the Himalayan Puncak Abadi Sharia Cooperative in Palangka Raya City can be realized because it is carried out by a notarial deed. The mortgage deed made with a notary deed can provide legal certainty for the parties. Based on the theory of legal certainty, the Murabahah contract is a natural legal certainty contract, which is a type of business transaction contract*

that has certainty of profits and income both in terms of amount and in terms of delivery, each party involved can predict the payment or payment time.

Keywords: Cooperative; Financing; Murabaha; Sharia.

1. Introduction

The increasing population has led to the emergence of urban movements in urban areas. Urbanization occurs due to lack of access to work, in order to meet the needs of each individual's life. Urbanization is a logical consequence of industrial-based development adopted by developing countries in the world including Indonesia which has led to changes in the urban economic structure.¹ In the next phase this raises many problems related to housing and shelter. The uncontrolled level of quality of life of the urbanites gives rise to the phenomenon of illegal housing in urban areas, due to the high cost of living, and the high cost of building houses. Home is a basic human need. As the main human need, the house is in demand by many people. However, the soaring house prices have made it rare for people to be able to buy a house in cash, so buying in installments or renting is the chosen alternative. There are many ways that can be taken by the community in meeting their basic needs in terms of housing. This is where the Cooperative appears to bridge the interests of home buyers and sellers by offering home ownership credit (KPR) facilities.

The following is the basis of sharia regarding *muamalah* and usury based on the Qur'an and Hadith. In the Qur'an Surah An-Nisa Verse 29 Allah says:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ
وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

It means:

"O you who believe, do not eat each other's wealth in a false way, except by way of commerce which is carried out with mutual consent between you. And do not kill yourselves; Verily, Allah is Most Merciful to you."

The explanation in this verse is that Allah forbids His believing servants to eat some of their wealth against others in a false way, namely by various kinds of efforts that are not justified, not in accordance with Islamic law. Such as *Riba*,

¹Andi Rahmah. (2016). *Hancurnya Keretakan Sosial .Rusaknya Lingkungan Kota Jakarta*. Jakarta: Pustaka. p.47.

Gambling, and various similar things that are full of power.²In the Qur'an Surah Al-Baqarah Verse 275 Allah says:

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ

It means:

"Those who eat (take) usury cannot stand except as the standing of a person who is possessed by Satan because of (pressure) madness."

According to Ibn Kathir's commentary, those who eat their usury property will not be able to rise from their graves on the Day of Judgment except as a madman stands when he is raging and possessed by Satan. That is, they stand in an inappropriate position.³

This principle is based on pleasure which shows that all forms of transactions carried out based on consensual feelings are permissible as long as there is no prohibition from Allah and His Messenger, but if they are contrary to the prohibition from Allah and His Messenger even though they are carried out on the basis of consensual then it is clearly forbidden. The interest system applied in housing loans in conventional cooperatives is clearly a *ribawi* transaction which is a prohibition for Muslim communities to transact. However, the emergence of sharia cooperatives is a breath of fresh air for Muslim communities who need facilities from cooperatives that are free of usury. Sharia cooperatives are now widely known and are growing.⁴

Cooperative is a non-bank financial institution that is engaged in savings and loan activities like a bank, where the operational license is under the Ministry of Cooperatives and not under the supervision of Bank Indonesia (BI). The establishment of a cooperative is legally required by using the deed of establishment made by a notary. The position of the Notary and the Notary's authority over the cooperative business entity is still listed in the provisions of the legislation. The notary who makes the cooperative deed is a party who works based on the code of ethics of his position and provides services to the community in the process of establishment, amendments to the articles of association and other deeds related to cooperative activities. The notary who

²Departemen Agama Republik Indonesia. (2016). *Al-Qur'an dan Terjemahnya*. Surabaya: Karya Agung. p.107

³Muhammad Nasib Ar-rifa'i. (2018). *Kemudahan Dari Allah—Ringkasan Tafsir Ibnu Katsir Jilid 1*. Jakarta: Gema Insani. p.451

⁴Abdullah Saeed. (2018). *Koperasi Islam dan Bunga*. Yogyakarta: Pustaka Pelajar. p.1

makes the cooperative deed because of his position is the party responsible for the authenticity of the deeds he makes.⁵

Sharia cooperatives are predicted to grow by an average of 25 percent per year. In the next 6 years, sharia cooperatives are projected to grow 100 times compared to this year. Since the implementation of the sharia economic system in the country, sharia cooperatives, which have been known as *baitul mal wa tamwil*, have thrived. This is in accordance with the mandate of the Minister of Cooperatives and SMEs Teten Masduki on the Commemoration of the 74th Cooperative Day in 2021, namely to encourage changes in the entrepreneurial mindset of cooperatives, especially KSP / CU / KSPPS to carry out business transformation by starting to finance productive sectors. KemenkopUKM targets an increase in the contribution of cooperative GDP to the national GDP by 5.5% and the development of 500 modern cooperatives by 2024.⁶

Cooperatives are one of the business actors, of course, there is a need for legal certainty, especially regarding the files regarding the existence and legality of the cooperative.⁷ Sharia cooperatives can encourage growth from the real sector economic movement through financing based on the principle of cooperation based on profit sharing from joint business activities.⁸ Sharia cooperatives in general are also institutions that function to receive, distribute public funds but with sharia principles. In receiving or distributing financing to the community, there are many contracts used in sharia cooperatives, such as *mudharabah*, *wadiah*, *Murabahah*. However, for the distribution of public financing, sharia cooperatives generally use a *Murabahah* sale and purchase contract. One of the most popular sharia cooperatives in the city of Palangka Raya is the Himalayan Puncak Abadi Sharia Cooperative. This cooperative in addition to serving savings and loans also serves financing, such as housing financing. The financing contract for buying and selling a house at the Himalayan Puncak Abadi Sharia Cooperative uses a *Murabahah* contract. *Murabahah* comes from the word *ribh* which means profit, profit, or additional.⁹ *Murabahah* financing agreement is the financing of home ownership based on the principle of *Murabahah* which is given by cooperatives to members to be used to buy houses and/or land to be owned and inhabited or used alone. *Murabahah* sale and purchase is a sale and purchase contract of an item with the cost of goods plus the agreed profit.

⁵Seri Suharsa and Lathifah Hanim. Peran Notaris Dalam Mewujudkan Badan Hukum Koperasi Melalui Transformasi Lembaga Keuangan Mikro Agribisnis (LKM-A) di Kabupaten Temanggung. *Jurnal Akta*. Volume 4 No. 4, 2017. p. 782-783

⁶ <https://kemenkopukm.go.id/> accessed on May 30, 2022. at 20.00 WIB

⁷Rate. Shifting the Power of Authentic Deeds and the Authority of Notaries in Making the Deed of Establishment of Cooperatives (After the Decision of the Constitutional Court No. 28/PUUXI/2013). *Journal of the Lex Renaissance*. Volume 1 Number 2 of 2017. p. 114

⁸Ibid

⁹Sugeng Widodo. (2014). *Moda Pembiayaan Lembaga Keuangan*. Yogyakarta: Kaukaba. p.408

2. Research Methods

The approach method used in discussing this research problem is a sociological juridical approach, namely legal research by approaching existing facts by examining and analyzing secondary data as the main source supported by field research.¹⁰ This research is a descriptive analytical research. This type of data uses primary data and secondary data. The data analysis method used in this research is descriptive qualitative.

3. Results and Discussion

3.1. Implementation of the *Murabahah* Agreement in the Sale and Purchase of Houses through the Himalayan Puncak Abadi Sharia Cooperative in Palangka Raya City

Cooperatives are economic organizations based on activities based on the principle of the people's economic movement based on the principle of kinship for the common good. The word cooperative is etymologically derived from the words *cum* and *aperari* which means to cooperate, where the two Latin words were adopted into English so that they become *Co* and *Operation*, so that they become *Cooperative* which means to operate together.¹¹ Sharia cooperatives have goals and business activities oriented to the Qur'an and Sunnah. Sharia cooperatives are starting to be in great demand and growing in Palangka Raya. Sharia cooperatives are considered to have benefits for many people, and can improve the economy in Pangkaraya not only in the conventional field but also in the field of Islamic economics. Although still affected by the COVID-19 pandemic, economic growth in the city of Palangka Raya is running well and smoothly, both the pure economy and the economy in the sharia sector, so that the economic cycle in the city of Palangka Raya continues to grow and develop.¹²

The implementation of the *Murabahah* contract for buying and selling houses in the Himalayan Sharia Cooperative Puncak Abadi Palangka Raya is initiated by using the principle of financing analysis. The principles of financing analysis are guidelines that must be considered by sharia cooperative financing officials when conducting financing analysis. Sharia cooperatives must be sure in advance that the financing provided will actually return. This confidence is obtained from the results of the financing assessment before it is distributed to obtain confidence about its members, such as through a correct and sincere assessment procedure.

¹⁰Soerjono Soekanto and Sri Mamudji. (1985). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Rajawali. p.15.

¹¹Wirama. AP Prohibition of Monopolistic Practices and Unfair Business Competition Exception-Against Cooperative Business Entities. *Journal of Law & Development*. Volume 39 Number 1 . Year 2019. p.198.

¹²<https://m.medcom.id/> accessed on June 6, 2022. at 19.00 WIB

Financing analysis using the 5C principle which is one of the most important preventive steps and is carried out with professionals who act as the first filter in proposing whether financing is feasible or not.¹³ This stage requires each member who will apply for home financing with a *Murabahah* contract to fulfill several required documents. The next step after the required documents are complete are:

- The first stage

Submit a proposal for a home financing application with a *Murabahah* contract to the Cooperative by completing the administrative files for completeness of data as specified. If the submitted application letter meets the eligibility standards, then you can immediately register. After that, the Cooperative also conducts BI checking to check the financing status of members at the Cooperative or at the bank.

- Second Stage

The financing proposal is then examined and judged for its feasibility by the Cooperative to check the completeness of the submission requirements documents.

- Third phase

If the proposed financing does not meet the completeness and validity of the documents, it will be returned for completeness. However, if the financing proposal meets the completeness and validity of the data, then the Cooperative immediately makes a juridical analysis, an assessment report (collateral assessment), and a document completeness report. Based on the files submitted by the cooperative to the members, it can be assessed regarding the feasibility level of the financing proposal for the application to be granted or not. The results of the analysis of financing proposals submitted by members can be submitted to the financing committee for consideration in making decisions on financing applications.

- Fourth Stage

The results of the analysis are submitted to the financing committee section to obtain a decision regarding the approval or rejection of the proposed financing proposal. The financing committee has the authority to provide assessments and decisions regarding the proposed financing, taking into account the results of the

¹³Abdul Manaf. Analysis of Murabahah Financing in Sharia Cooperatives. Thesis. Syarif Hidayatullah State Islamic University Jakarta. Year 2020 p.87

analysis.

- Fifth Stage

The financing proposal that gets approval will then be carried out with a binding deed with a notary deed. In the case of house financing, the cooperative will buy the desired house that has been chosen by the members, then the members buy the house from the cooperative with a *Murabahah* agreement. .

Murabahah financing with problems in terms of late payments and/or financing qualifications can be resolved in various ways, from coaching to rescue, including restructuring, rescheduling (re-scheduling), ceilings, selling collateral yourself, to execution. Law enforcement in the field of sharia cooperatives in resolving problematic financing can be overcome by means of qadhi, tahkim, and expansion with the al-islah path. Law enforcement in general can be interpreted as an effort to implement the law as it should. Law enforcement theory is a process to make legal wishes come true.¹⁴

3.2. Legal Certainty of *Murabahah* Contract in Selling and Buying a House Through Himalayan Puncak Abadi Sharia Cooperative in Palangka Raya City

Since its inception in fiqh, this *Murabahah* financing appears to have been used purely for commercial purposes. *Murabahah* is a form of buying and selling with a commission, in which the buyer usually cannot get the goods he wants except through an intermediary or when the buyer does not want to go to the trouble of getting it himself, so he seeks the services of an intermediary.¹⁵

The implementation of *Murabahah* financing at the Himalayan Puncak Abadi Sharia Cooperative, Palangka Raya City, where the cooperative member who submits the application must meet the legal requirements of the agreement, namely, the subjective requirement element must be 21 years old or have been or have been married, physically and mentally healthy. Regarding the *Murabahah* object, it must also be certain, clear and fully owned by the cooperative, for example, the *Murabahah* object is a house. In practice, the purchase of the *Murabahah* object is carried out by the *Murabahah* member himself, or as a representative of the cooperative with a wakalah or representative contract. After the wakalah contract in which the *Murabahah*

¹⁴Satjipto Rahardjo. (2009). *Penegakan Hukum*. Yogyakarta: Genta Publishing. p. 24.

¹⁵Suci Handayani. Pelaksanaan Pembiayaan Murabahah Berdasarkan Prinsip-Prinsip Syariah Di Bank Syariah. *Jurnal AKTUALITA*. Volume 1 No. 2, 2018. p.701

buyer acts for and on behalf of the bank to purchase the *Murabahah* object.¹⁶

The implementation of sharia principles in the *Murabahah* contract at the Himalayan Puncak Abadi Sharia Cooperative is in accordance with the DSN-MUI fatwa. In *Murabahah* financing, members benefit in the event that no interest is charged in this *Murabahah* so that members will not lose if there is an increase or decrease in market interest rates. While the *Murabahah* used is the selling price which will not change during the contract period. Thus, members from the beginning already know the amount of installments that will be paid during the contract period and will not increase or decrease. Besides having to fulfill the legal requirements of the agreement as stated in Article 1320 of the Civil Code. The practice of *muamalah* in Islam in principle must be in accordance with and not conflict with sharia norms.

Maisir elements and unjust elements in *Murabahah* can be eliminated with project certainty and the level of cooperation. In this case, members are not burdened with fluctuations in bank interest rates. The element of *gharar* in this case occurs when changing something that is certain to be uncertain, for example, *gharar* in price or *gharar* in time. This happens if the *Murabahah* financing for the house is within 10 (ten) years with a margin of 5% or the *Murabahah* for the house is within 12 (twelve) years with a margin of 10% then agreed by the members.

Uncertainty occurs because the agreed price is not clear, whether 5% or 10%. Unless the member states that he agrees to make a *Murabahah* transaction for a house with a margin of 5% paid within 10 years, then there is no *gharar*. The element of *gharar* in the application of *Murabahah* can be avoided by the certainty of installment payments. Thus, it is certain that the number of monthly installments can be predicted in accordance with the financing period proposed by members, because in this case sharia cooperatives do not recognize the interest system.

The element of usury in *Murabahah* can be eliminated by the concept of buying and selling, because basically Islam justifies buying and selling and forbids usury. In the technical element, members do not feel aggrieved by the Cooperative with clarity regarding the price of the object to be purchased by members and the profits taken by the bank. Likewise, the object being traded must already exist at the time of signing the contract and the object is not something that is forbidden.¹⁷

The basis of the contract is certainty. Judging from the theory of legal certainty,

¹⁶Ibid. p.710

¹⁷Ibid.

the *Murabahah* financing contract at the Himalayan Puncak Abadi Sharia Cooperative is carried out by a notarial deed. The role of a notary in the service sector is as an official who is authorized by the state to serve the community in the legal field. As an official who is appointed by the state and carries out duties in civil matters, he is obliged to comply with the existing legal umbrella, in this case subject to special rules governing how a notary should carry out his duties and authorities. In carrying out its functions, a notary must be guided by the UUJN and the Notary Code of Ethics. Community life in public services is closely related to the need to obtain legal certainty. In this regard, the philosophical foundation for the establishment of the UUJN is the realization of guarantees of legal certainty, order and legal protection. The realization of these three things is based on truth and justice through the deed he made.¹⁸

According to the author's analysis based on legal certainty theory, the mortgage deed made with a notary deed can provide legal certainty for the parties. Deed is a letter affixed with a signature, which contains events that form the basis of a right or an engagement, the purpose of which is intentionally made as evidence. So to be considered a deed, the letter must be signed. The requirement to sign a letter so that it can be called a deed is indicated in Article 1869 of the Civil Code. If the deed is made by an incompetent or incompetent person or the deed is defective, then it is not an authentic deed but has the power to be written under the hand if it is signed by the parties.¹⁹

Based on certainty theory According to the law, the *Murabahah* contract is a natural certainty contract, which is a type of business transaction contract that has certainty of profits and income both in terms of amount and in terms of delivery, each party involved can predict the payment and the time of payment. Thus, the nature of the transaction is fixed and predetermined. From this point of view, *Murabahah* contracts are better than conventional bank credit agreements.²⁰ Legal certainty is a legal instrument of a country that contains clarity, does not cause multiple interpretations, does not cause contradictions and can be implemented that is able to guarantee the rights and obligations of every citizen in accordance with the existing culture of society.

4. Conclusion

The implementation of the *Murabahah* contract in the sale and purchase of houses through the Himalayan Puncak Abadi Sharia Cooperative in Palangka Raya City is initiated by using the principles of 5C financing analysis and through

¹⁸I Made Mulyawan Subawa. Op.cit.. p.2

¹⁹Sudikno Mertokusumo. (1993). *Hukum Acara Perdata Indonesia*. Yogyakarta: Liberty. p.121.

²⁰Zulfikri. Kepastian Hukum Akad Murabahah Pada Jual Beli Rumah Melalui Perbankan Syariah. *Jurnal Rumpun Ekonomi Syariah*. Volume 2 No. 1. June 2019, p.14

several stages. namely the first stage starting from the submission of the application by completing the required documents, the second stage of checking the completeness of the documents, the third stage of feasibility analysis of the financing proposal, the fourth stage of approval or rejection of the analysis results through the financing committee, the fifth stage of binding with a notary deed regarding the financing provided. Approved. *Murabahah* contracts are used as a basis for thinking and transacting in the enforcement of sharia contract law. The Himalayan Puncak Abadi Sharia Cooperative in Palangka Raya City in resolving problematic financing can be overcome by means of qadhi, tahkim, and al-islah. The legal certainty of the *Murabahah* contract in the sale and purchase of houses through the Himalayan Puncak Abadi Sharia Cooperative in Palangka Raya City can be realized because it is carried out by a notarial deed. The mortgage deed made with a notary deed can provide legal certainty for the parties. An authentic deed is a perfect evidence, as referred to in Article 1870 of the Civil Code. An authentic deed provides between the parties including the heirs or the person who has rights from the parties a perfect proof. Based on the theory of legal certainty, the *Murabahah* contract is a natural legal certainty contract, which is a type of business transaction contract that has certainty of profits and income both in terms of quantity and in terms of delivery.

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