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Review Article

The Development of Murabaha in Indonesian Islamic Banks

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ABSTRACT

Over the last few years, Islamic trading transaction has become more popular in Indonesia. Retail trade in Islamic banks for an example. There are many Islamic banks in Indonesia that provide alternative business transactions and halal product in retail trade to the public based on Islamic law, but Islamic banks must obey not only the origins of Islamic law, such as the Holy Qur'an and the Sunnah but also Islamic principle in terms of the prohibition of uncertainty, interest and gambling when they run their business in retail trade. One of the agreements in retail trade is Murabaha which involves several possible structures, notably direct trading, company (seller) purchases via an agent or a third party and murabaha via the customer as an Agent. However, there are several contemporary issues, particularly Murabaha via Shares and executing time of Murabaha that still need to be discussed whether they disobey Islamic law and basic Islamic principles or not.

Keywords: murabaha; islamic banks in Indonesia; riba; islamic law; finance law.

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ABSTRAK

Transaksi perdagangan Islam telah menjadi lebih populer di Indonesia dalam beberapa tahun terakhir. Sebagai contoh bisnis perbankan syariah dalam perdagangan retail. Ada banyak bank syariah di Indonesia yang menyediakan transaksi bisnis alternatif dan produk halal dalam perdagangan retail kepada masyarakat berdasarkan hukum Islam, namun bank-bank Islam harus mematuhi tidak hanya sumber hukum Islam, seperti Al Qur'an dan Sunnah tetapi juga prinsip-prinsip hukum Islam dalam hal riba, gharar dan maysir ketika mereka menjalankan bisnisnya dalam perdagangan retail. Salah satu bentuk perjanjian dalam perdagangan retail adalah Murabaha, yang memiliki beberapa kemungkinan bentuk perdagangan retail, yakni perdagangan langsung, perusahaan (penjual) pembelian melalui agen atau pihak ketiga dan murabaha melalui pelanggan sebagai agen. Namun, ada beberapa isu-isu terkini, khususnya pembelian saham dengan murabaha dan waktu mengeksekusi Murabaha yang masih perlu dibahas apakah mereka melanggar hukum Islam dan prinsip-prinsip dasar Islam atau tidak.

Kata kunci: murabaha; bank-bank Islam di Indonesia; riba; hukum islam; hukum pembiayaan.

1. Introduction

One of the factors influencing a country's economic increase is trading. Once a state has a high trade business activity, the economy of the country would also rise. Likewise, its growth would slow when it does not have a sustainable trade business activities; therefore, the trading business would affect the growth of a country's economy. In addition, Islamic

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trading transaction in Indonesia has increased significantly. A good example would be the business of Islamic banks in retail trade in Indonesia. There are many Islamic banks in Indonesia that provide an alternative business transaction and halal product in retail trade to the public based on Islamic law. Due to the fact that the majority of the population is Moslem, Islamic banks have a big opportunity for running a retail trade in Indonesia-based on Islamic law.

The business of Islamic finance is not similar to conventional finance regarding the basic principles and the origins of Islamic law. One of the differences is Islamic banks offer interest-free banking whereas conventional banks offer interest. Islamic banks must obey Islamic law that comes from not only the Holy Qur'an but also Sunnah as primary origins, and several secondary and dependent sources that obtain the value of not only the Holy Qur'an but also the Sunnah, notably ijma and ijtihad. In addition, they must also comply with Islamic principles in terms of the prohibition of uncertainty, interest and gambling when they run their business in retail trade.

One of the agreements in retail trade is Murabaha that is a sale and purchase contract in which the seller sells a good by asserting the purchase price to the buyer and the buyer pays for it with more price as a profit¹. The trading activities which are conducted by the parties might be run either via the customer as agent or via a third party agency. This possible structures of Murabaha in retail trade might involve Direct Trading, Company (seller) Purchases via an agent or a third party and Murabaha via the customer as an Agent.

There are several contemporary issues that affect the differences between the theory and the practice of Islamic finance in Indonesia regarding murabaha contract. Murabaha via Shares. This issue arises once it would be "buyback". The second issue relates to executing time of Murabaha, particularly whether Islamic bank could put the goods up for sale legally to its customer or not. However, these several issues still need to be discussed whether they disobey Islamic law or not, but Islamic bank must comply with Islamic principles in terms of the prohibition of Gharar, Riba and Maysir.

1.1 Islamic Jurisprudence

The primary origins of Islamic Jurisprudence come from the Holy Qur'an and *Sunnah*. Firstly, it is from The Holy Qur'an. It provides the key text upon that the Sharia is founded. In other words, it is the Prophet Muhammad Revelations, that came from Allah

¹ National Sharia Board of Indonesia, *DSN No.04/DSN-MUI/IV/2000 Tentang Murabaha* (Fatwah of National Sharia Board NO: 04/DSN-MUI/IV/2000, 2000). [View Item](#).

SWT². According to Coulson³, the Holy Qur'an is "*the main expression of the Islamic Jurisprudence ideologically and historically*". Furthermore, the second sources of Islamic Jurisprudence comes from the Sunnah. It defines literally "*a beaten track*"⁴. Regarding religious beliefs, it conveys all the saying and acts of the Prophet Muhammad and everything he commended. It is defined as hadith that literally refers to a "history" or "communication"⁵. However, in this perspective, it is recognized to define particularly a description of the Prophet Muhammad life and conduct⁶. It was constructed from the recollection of Companions the Prophet Muhammad. It was merely put in text after several substantial period had passed since the death of the Prophet Muhammad⁷. Therefore, not only the Holy Qur'an but also *Sunnah* is the main and independent origins of religious beliefs. The Qur'an would take priority over the *Sunnah* as certain ethical. Moslem scholars ought to use the Sunnah for legal guidance merely if there is no obvious directive could be gained from the Holy Qur'an⁸. Furthermore, there are several the secondary and dependent sources that obtain the value from not only the Holy Qur'an but also the Sunnah. They are Ijma and ijtihad that involve qiyas as the secondary of Islamic Jurisprudence⁹.

1.2 Basic Terms of Islamic Law

Islamic Jurisprudence does not recognize commercial transactions which have illegal aspects. Islamic principle has categorized several features that are to be avoided in business transactions, notably Riba, Gharar and gambling. They must be avoided as if contract has these elements, it would be void and null contract. Therefore, Islamic contract must avoid them to be legal and valid contract due to Sharia compliance.

1.2.1 Riba prohibition

Riba is expansion, increase, growth or addition¹⁰. However, Islam does not always prohibit every increase¹¹. The base of prohibition is accordance with the manner via which an

² Angelo M. Vernandos, *Islamic Banking and Finance in South-East Asia*, 3rd ed. (Singapore: World Scientific Publishing, 2012). p. 17. [View Item](#)

³ Noel J. Coulson, "Islamic Law," in *An Introduction to Legal Systems*, ed. J.D.M. Derrett (London: Sweet & Maxwell, 1968). [View Item](#).

⁴ Vernandos, *Islamic Banking and Finance in South-East Asia*.

⁵ Ibid.

⁶ Ibid.

⁷ There are differences of scholarly opinion concerning how early the *hadith* commenced to be recorded. The earliest systemic collection which has survived was the *Muwatta* of Iman Malik (d. 179 AH). See Daniel Brown, *Rethinking Tradition in Modern Islamic Thought* (Cambridge: Cambridge University Press, 1996). p. 94. [View Item](#).

⁸ Vernandos, *Islamic Banking and Finance in South-East Asia*.

⁹ A. R. A. Haqqi, *The Philosophy of Islamic Law of Transactions* (Malaysia: Centre For Research and Training CERT Publication, 2009). p. 17. [View Item](#).

¹⁰ Abu Abdullah Muhammad Al-Qurtubi, "*al-Jami*" *Li Ahkam Al-Qur'an Volume 3*, n.d.. p. 348. [View Item](#)

increase is obtained¹². Furthermore, riba defines an excessive payment that has to be paid by borrower to the lender as a condition for the loan¹³. So the lender would gain the addition from the loan that given to the borrower. At the very beginning, it is to be noted that there is a similarity of Moslems view regarding the Riba prohibition. Furthermore, the main sources of Islamic jurisprudence strongly prohibit Riba.

The Holy Qur'an definitely prohibit Riba. In the Makkah period, the people provided several displeasure indications against Riba¹⁴. However, Islam imposed the express prohibition prior to the "Uhad" battle in the year 3 AH¹⁵. Around two weeks before the passing away of the Holy Prophet, Riba is prohibited finally and repeatedly in the year 10 AH¹⁶. The Holy Qur'an (not only al-Nisa: 161 and al-Baqarah: 275-281; but also al-Imran: 130 and al-Rum: 39) prohibits Riba strictly.

In addition, numerous traditions of the following holy Prophet (PBUH) revealed the prohibition of Riba. One of them is Zaid B. Aslam¹⁷ described that interest in times was of this nature: "*a person lends fund or money to other people for a particular time and the period expired, the lender will ask: 'you repay extra to me', once he made payment, it was well, otherwise the lender added the loan and extended the time for repayment*".

1.2.2 Gharar prohibition

Gharar is uncertainty, hazard, or risk¹⁸. In other words, Gharar is a thing that has lack of clarity regarding the goods, or the price or the time of delivery on a contract¹⁹. A good example would be the sale of a fish in water. It has no clarity whether people would pay the cost for the fish or would pay the cost for service. Furthermore, if people pay the cost for the fish, people do not recognize how many fish in the water. Islam prohibits a sale or any other business that contains Gharar element. It contains Gharar if the liability of any parties to a contract is uncertainty or the price of goods is uncertainty. However, as the lack of agreement on the part of Moslem jurists as to precisely what does and does not constitute Gharar it creates uncertainty as to whether any given transaction involving it is permissible or not,

¹¹ Mohd. Daud Bakar, *Riba and Islamic Banking and Finance (Essential Reading in Islamic Finance)* (Malaysia: Centre For Research and Training (CERT) Publication, 2008). p. 7. [View Item](#).

¹² Ibid.

¹³ Ibid.

¹⁴ Muhammad Ayub, *Understanding Islamic Finance* (Chichester: John Wiley & Sons, 2007). [View Item](#). p. 44.

¹⁵ Ibn Hajar Al-Asqalani, *Fathul Bari, Sharah of Sahih Al Bukhari*, 8th ed. (Makkah, 1981). p. 205.

¹⁶ Ayub, *Understanding Islamic Finance*. p. 44.

¹⁷ Malik Ibn-e-Anas, *Muwatta' (English Translation)*, ed. M. Rahimuddin Sh. and Muhammad Ashraf (Lahore, 1985). p. 427.

¹⁸ Ayub, *Understanding Islamic Finance*. p. 58.

¹⁹ Ibid.

Moslem jurists have different opinions to determine Gharar in any transactions that is accordance with Islamic Jurisprudence.

Although the Holy Qur'an has no verse to forbid Gharar explicitly, in many verses it prohibits vanity (*albatil*)²⁰. The Holy Qur'an (an-Nisa (4): 161) and Al-Baqarah (2): 188 showed that “do not consume your property among yourselves for vanities, nor apply it as an enticement for the courts“.

Interpreters of these verses have a consensus which Gharar is vanity²¹. According to Ibn Al-Arabi, he claimed that *al-batil* or vanity is not legal as it is forbidden by Islamic principles, notably Riba and Gharar²². Furthermore, Al-Tabari considered vanity as consuming other's good in method that was prohibited by Islamic Law²³. Moreover, Zamakhsari asserted that the acts that were prohibited by religious belief as vanity, notably theft, gambling and *Gharar* contracts²⁴.

One of the reasons that Gharar is not legal is any risk between the parties that make contract at the beginning and may cause a loss for one party and profit for the other. Risk due to uncertainty between the parties might generate unfair and unbalanced profit or loss. It is whether the way that profit of loss is achieved is unfair or unbalanced.

According to the Malikies Mahdzab, the principles covering Gharar have been classified by Shaikh Al-Dhareer²⁵ who is a contemporary scholar through the following below:

1. Gharar in the conditions and substance of the agreement involves²⁶:
 - a. Two sales in one
 - b. Suspended transaction
 - c. Future transaction
2. Gharar in the object of the agreement involves²⁷:
 - a. The object of unidentified identity
 - b. The object of unidentified genus

²⁰ Abdul Rahim Al Sa'aati, "The Permissible Gharar (Risk) in Classical Islamic Jurisprudence," *Journal of King Abdulaziz University: Islamic Economics* 16, no. 2 (2003): 3–19. [View Item Google Scholar](#)

²¹ Ibid.

²² Abu Bakrr Ibn Al-Arabi, *Ahkam Al-Qur'an*, 1st ed. (Beirut: Dar al kotob al Ilmiyyah, 1957). pp. 41-42. [View Item](#).

²³ Mohamed Bin Jareer Al-Tabary, *Tafsir Al-Tabari: Al-Musammá Jami' Al-Bayan Fi Ta'wil Al-Qur'an*, 3rd ed. (Beirut: Dar al-Kutub al-'Ilmiyah, 1997). p. 949. [View Item](#).

²⁴ Sa'aati, "The Permissible Gharar (Risk) in Classical Islamic Jurisprudence."

²⁵ Al Siddiq Mohammad Al Amin Al Dharir, *Al-Gharar in Contracts and Its Effects on Contemporary Transaction*. (Jeddah: Islamic Reseach and Training Series, 1997). pp. 10-11. [View Item](#).

²⁶ Ibid.

²⁷ Ayub, *Understanding Islamic Finance*. p. 60.

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- c. The object of unidentified species
 - d. Ignorance about the time of payment in deferred transactions
 - e. Inability to deliver the item
 - f. Agreement on a nonexistent item
 - g. the item could not be seen

Furthermore, Islamic Jurisprudence forbids the power to sell to prevent uncertainty under the following three circumstances²⁸.

1. There are no things as the object of legal transaction. In other words, it does not exist.
2. There are things that exist. However, the seller does not have the possession of those things.
3. There are things that exist. However, they are exchanged on the basis of uncertain payment and delivery.

The general principles could be implemented to avoid Gharar. One of them is the contract must be certain regarding the subject matter, price and time of delivery. The good must be defined clearly with proper description in the contract. Furthermore, the rights and obligation of the parties that are concerned must be determined and defined clearly in the contract. The availability, deliverability and existence of the commodity should be known by the parties.²⁹

1.2.3. Maysir prohibition

The Holy Qur'an prohibits maysir that is gambling. It condemns gambling (maysir), showing by it Satan "*would like merely to spread hatred and enmity among you, and delay you from prayer and from the remembrance of Allah SWT*"³⁰. The holy Qur'an (al-Maidah (5): 90); and al-Baqarah (2): 219 showed that "*They ask you about wine and gambling. Say, 'In them is serious wrong doing and (yet, several) advantage for people. However, their transgression is greater than their advantage'. And they ask you what they ought to pay. Say, 'The excess (beyond needs)'. Therefore, Allah makes obvious to you the verses (of revelation) which you may provide thought*".

One of the reasons why maysir is prohibited is that gambling, or the game is not the way to get the property, money or profit. In other words, gaining revenue without working or gaining things too easily are prohibited. If people would like to earn money, they have to

²⁸ Ibid.

²⁹ Ibid.

³⁰ Frank E. Vogel and Samuel L. Hayes, *Islamic Law and Finance*, 1st ed. (Berlin: Springer, 1998). p. 87. [View Item](#).

work hard. If they do not work, they will not have money. Secondly, gambling could cause hate or hatred or hostility for the party who lose. Therefore, it is not accordance with Islamic Law.

According to Samuelson³¹, Gambling involves the voluntary idea and intentional risk taking. There are two types of commercial gambling. The chance games, notably lotteries, casino games, and skill, particularly football games and horse races³². The second type, notably skill and chance game is speculation regarding Brenner³³. He argued that it is an act where the member, notably the gamblers earn money using their skill. Either speculation or gambling convey their traditional act because a difference from the common view as they might be against the marketplace³⁴. Brenner considered the reason they do speculation and gambling is the hope of becoming rich quickly³⁵. Take lottery as an example. It is one of the ways to getting rich based on speculation. If people win a lottery, they will become rich. If they lose a lottery, they might be disappointed, hatred or hate. Therefore, Islamic Jurisprudence forbids gambling or maysir in any transactions.

1.3 Brief Definition of Murabaha

One of the contracts form in Islamic finance is Murabaha. Regarding the fiqh, it is a sale and purchase contract which has the nature of trust on specific goods³⁶. Ayub describes it is the purchase price plus the profit which the parties can make a bargain profit margins³⁷. In other words, it is one of the form of particular purchase contract when the seller to provide information to buyers about the cost of acquisition of goods, including the purchase price of the goods and the profit³⁸. According to Fatwah Of National Sharia Board of Indonesia³⁹, it is a sale and purchase contract in which the seller sells a good by asserting the purchase price to the buyer and the buyer pays for it with more price as a profit. In other words, bank purchases the item that is needed by customer and then bank sells this to the client with the purchase price plus the profit, but the transactions must be valid and avoid riba, gharar and maysir. In

³¹ Paul Samuelson, *Economics* (New York: McGraw-Hill, Back company, 1976). pp. 425-426.

³² Sa'aati, "The Permissible Gharar (Risk) in Classical Islamic Jurisprudence."

³³ Reuven Brenner, *Gambling and Speculation A Theory, a History, and a Future of Some Human Decisions* (Cambridge: Cambridge University Press, 1990). pp. 90-112. [View Item](#).

³⁴ Ibid.

³⁵ Ibid.

³⁶ Sayyid Sabiq, *Fiqh Sunnah Jilid 12*, 10th ed. (Bandung: Alma' Arif, 1996). p. 83. [View Item](#). Imam Ghazali Said and Achmad Zaidun, *Tarjamah Bidayatul Mujtahid Jilid III (Ibnu Rusyd)* (Jakarta Pusat: Pustaka Amani, n.d.). p. 181. [View Item](#). Adib Bisri Musthofa, *Tarjamah Muwaththa' Al-Imam Malik R.a.: Jilid 2* (Kuala Lumpur: Darulfikir, 1992). pp. 262-263. [View Item](#).

³⁷ Ayub, *Understanding Islamic Finance*.

³⁸ Ascarya, *Akad & Produk Bank Syariah*, 1st ed. (Jakarta: Rajawali Pers, 2013). pp. 81-82.

³⁹ Indonesia, *DSN No.04/DSN-MUI/IV/2000 Tentang Murabaha*.

addition, the Bank Indonesia Regulation on the Implementation of Islamic Principle in the Transaction of Sharia Banks⁴⁰, reveals financing at Islamic Bank relates to the purchase transactions which are based on the Islamic contract of Murabaha, Salam and Istishna. Furthermore, regarding Bank Indonesia Circular Letter⁴¹, one of the requirements of Murabaha contract is bank provides fund to purchase a good relating to Murabaha transaction with customer as a buyer.

Islamic sources provides several rules of Murabaha. Firstly, The Qur'an, Surah An Nisa (4): 29 reveals:

“O you who have believed, do not consume one another's wealth unjustly¹⁵⁵ but only [in lawful] business by mutual consent. In addition, do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful”.

Secondly, Al Baqarah (2): 275 mentions:

“Those who consume interest cannot stand [on the Day of Resurrection] except as one stands who is being beaten by Satan into insanity. That is because they say, ‘Trade is [just] like interest’. But Allah has permitted trade and has forbidden interest. So whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. But whoever returns to [dealing in interest or usury] – those are the companions of the Fire; they will abide eternally therein”.

In addition, Surah Al-Ma'idah (5): 1 describes *“O you who have believed, fulfill [all] contracts”.*

1.4 Possible structures of the practice of Murabaha in Indonesia.

Particular expertise might be required by trading and other real sector business activities. The firms might purchase goods and assets and sell them to their clients, specifically on the base of deferred payment. Therefore, the trading activities which are conducted by the parties might be run either via the customer as agent or via a third party agency. This possible structures of Murabaha involve⁴²:

1.4.1 Direct Trading

The most ideal possibility is direct trading concerning the fulfilment of the Murabaha basics. However, there might be several difficulties in retail trading business, specifically for

⁴⁰ Governor of Bank Indonesia, PBI No. 9/19/PBI/2007 Tentang Pelaksanaan Prinsip Syariah Dalam Kegiatan Penghimpunan Dana Dan Penyaluran Dana Serta Pelayanan Jasa Bank Syariah (Bank Indonesia Regulation No. 9/19/PBI/2007: SG No. 165 Dpbs, 2007). Article 1 (3c). [View Item](#).

⁴¹ Governor of Bank Indonesia, SEBI No. 10/14/DPbS Tentang Pelaksanaan Prinsip Syariah Dalam Kegiatan Penghimpunan Dana Dan Penyaluran Dana Serta Pelayanan Jasa Bank Syariah (Bank Indonesia Circular Letter No. 10/14/DPbS, 2008). [View Item](#).

⁴² Ayub, *Understanding Islamic Finance*. p. 221.

banking business. One of them is the managerial difficulties and the possibility of corruption and this concern could be addressed via the introduction of effective internal controls⁴³.

1.4.2 Company (seller) Purchases via an agent or a third party

Another possibility is through an agent to retain inventory or to obtain or buy items which relates to customers' requests for Murabaha business⁴⁴. It is likely to meet the Islamic principle of taking possession and commercial hazard by the bank or company for the period between the assets purchase from the trader or merchant and their transaction to the customer on Murabaha⁴⁵. The client could not guarantee the transportation risk of the commodities if it is directly delivered by a third party to the seller as the goods safety of the owner responsibility⁴⁶.

1.4.3 Murabaha via the customer as an Agent.

This structure is one of the safe way for company (seller) to prevent commodity-based threats and related difficulties. The client ought to describe to the supplier or trader about his/her agency positions⁴⁷. However, the trading structure via a customer as Agent is likely to create Murabaha operation a back door to interest, hence, there is a need extra care to maintain it relating to Islamic principle⁴⁸.

2. Discussion

All valid contracts in banking finance transaction must obey Islamic principle in terms of the prohibition of Maysir or gambling, Gharar or uncertainty and Riba or interest. The majority of scholars, Kettel and Ayub believed that Islamic contract must avoid them in current business transaction, notably murabaha contract. However, uncertainty can be allowable when among the Moslem jurists have no broad consensus or contract that are prohibited and the contract that involves uncertainty is not valid⁴⁹. When one Moslem scholar or school allows this with or without circumstances, then this is considered as allowable uncertainty⁵⁰.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ According to the AAOIFI standard, the option of a third party agent is better: it recommends that the customer should not be appointed to act as agent for purchase of items for Murabaha except in situations of dire need . AAOIFI, *Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) Standard* (Bahrain, 2004). Clause 3/1/3, p. 117. [View Item](#).

⁴⁶ Ayub, *Understanding Islamic Finance*.

⁴⁷ AAOIFI, *Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) Standard*. Clause 3/1/1, pp. 117. 130.

⁴⁸ Ayub, *Understanding Islamic Finance*. p. 222.

⁴⁹ Sa'aati, "The Permissible Gharar (Risk) in Classical Islamic Jurisprudence."

⁵⁰ Ibid.

It is true that interest, gambling and uncertainty are prohibited by the theory of Islamic Jurisprudence. However, the practice of Islamic finance in Indonesia is not similar to the theory, notably murabaha contract in house financing. This theory shows that Islamic finance has to purchase a house earlier before selling it to clients. That is to say, bank purchases the item that is needed by customer and then bank sells this to the client with the purchase price plus the profit, but the transactions must be valid and avoid riba, gharar and maysir. In contrast, Islamic finance might not have and purchase a house earlier in practice.

One of the alternative contracts that is implemented by Islamic bank for house financing is Murabaha. There are several contemporary issues that relates to the differences between the theory and the practice of Islamic finance in Indonesia regarding murabaha contract in house financing. One of the issues is Murabaha via Shares. It has been conducted by several Sharia banks. Payment should be directly made by Islamic banks to the brokers and agent should not appoint the client for buying the shares. After this is conducted, Sharia banks could sell them onward on a basis of Murabaha, and once the payment takes time, they should wait for tangible transfer because it takes mostly several days, so they have to take the price risk⁵¹. Shares Murabaha would be “buy-back” that is prohibited once it is been of any sister matter or concern of the customer. Therefore, although it is allowable Sharia banks require to be more careful regarding the concerns of Islamic compliance⁵².

In addition, the second issues relates to executing time of Murabaha, particularly whether Islamic bank could put the goods up for sale legally to its customer or not because the theory that is advised by most scholar reveals that when Islamic bank executes Murabaha with the customer, it has to take full possession of the item or the object before putting the object up for sale, but it has no possession and the items does not exist⁵³. A good example would be a car financing. It might have the difficulties regarding the risks and a lack of warehouse capabilities to fulfill the terms and prerequisite of murabaha contract once it has to take full possession of the goods before putting the item up for sale. However, to resolve these difficulties, it should make agency contract as a part and package of Murabaha agreement and make a separate offer and acceptance between the customer and Islamic financial intermediary institutions⁵⁴.

⁵¹ Ayub, *Understanding Islamic Finance*.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

However, Islamic finance in Indonesia obeys Islamic law in terms of uncertainty, gambling and interest in Islamic business. Car financing as an example, even though Islamic bank has not purchased a car or product, it does not disobey Islamic principle because its business does not include uncertainty, gambling and interest. In addition, the practice of Murabaha in Indonesia implements MPO that is permissible.

Firstly, murabaha contract between Islamic bank and the client in car financing does not include excessive Gharar regarding the prohibition of uncertainty. It is because the items or car is certain. According to Maliki school and Al-Saati, the commercial transaction that has the object identity could be permissible Gharar⁵⁵. There is no risk in car financing as the buyer (the bank clients) would obtain the clarity of the car. This could be done by identifying the car, so the buyer could recognize the type and quality of purchased car. Prior to entering into murabaha contract, Islamic finance would ask a client or borrower to not only make a promise to buy a car but also write the model or specification of this to ensure the desire car is bought. Moreover, it might ask a customer to act as a representative to purchase this in a car dealer where a client would like to purchase. A client would gain clear and certain information about the price of the car and the time of car delivery from the automotive dealer or the broker. Therefore, with regards to certain car, time of delivery, and price, the transaction does not consist of Gharar.

Secondly, murabaha contract does not consist of Riba. It is because Islamic bank does not lend money to buy a car. Al Qurtubi stated that Riba is excessive⁵⁶. According to Bakar, Riba is addition as a requirement for the loan agreement⁵⁷. In murabaha contract, the position of the client is not a borrower. However, the positions or the relationship between the Islamic bank and the client are the seller and the buyer. Islamic bank sells a car to the buyer (the client). The client who is the buyer would not pay interest to Islamic Bank. Therefore, the car financing is free from interest or Riba.

Moreover, murabaha contract does not include Maysir. It is because the car financing does not play the game or involve gambling activities. According to Samuelson, it reflects risk taking⁵⁸. Furthermore, Brenner argued that the reason they do speculation and gambling is the hope of becoming rich quickly⁵⁹. The bank as a seller sells the car to the client, and the

⁵⁵ Sa'aati, "The Permissible Gharar (Risk) in Classical Islamic Jurisprudence."

⁵⁶ Al-Qurtubi, "*al-Jami' Li Ahkam Al-Qur'an Volume 3*". p. 348.

⁵⁷ Bakar, *Riba and Islamic Banking and Finance (Essential Reading in Islamic Finance)*. p. 7.

⁵⁸ Samuelson, *Economics*. pp. 425-426

⁵⁹ Brenner, *Gambling and Speculation A Theory, a History, and a Future of Some Human Decisions*. pp. 90-112.

client buys a car from the Islamic bank. The car is not from lottery. Furthermore, car financing does not have speculation as the client or the buyer would obtain certain information about the car that is purchased.

In addition, according to Venardos about minor uncertainty in the previous subtopic, the transaction fulfills the circumstances because the existence of the car that is purchased is real⁶⁰. The buyers could recognize the characteristic of the car, so they could inspect the car before buying it. Moreover, to obtain valid transaction that comply with Islamic principle, the car must be *halal*.

Besides, according to the basic regulation of the murabaha contract in Indonesia, central bank and Sharia Supervisory Board (Majelis Ulama Indonesia–MUI) issued regulations. Some of them are the Islamic Banking Law⁶¹, Central Bank regulation⁶², Fatwah of Sharia Supervisory Board⁶³. Furthermore, Sharia Supervisory Board has supervised this product to obey Islamic principle regarding *fatwah* of Murabaha.

Moslem jurists have pointed out the obvious identification of the object contract and delivery to the buyer definitely. In order to be a valid sale, Islamic finance need a several number of terms and circumstances regarding the object contract. One of them is the object must exist and the seller must own things that be sold. The seller who does not have the possession of things cannot sell. For instance, once Islamic bank would like to sell a car that is currently owned by the car dealer to customer. However, it is hopeful that Islamic finance would purchase this from a car dealer and deliver it to customer subsequently, the contract would be invalid and void regarding the Sharia. At most, Islamic finance could make a promise to sell it to customer⁶⁴.

It is related to conditions which take possession of the commodities prior to their trade. According to Imam Bukhari: “*Ibn Umar described “ I saw the people purchase food randomly in the life time of the Prophet. Once they attempted to trade it prior to owning it, they were penalized”*.”⁶⁵ According to the commentary of Qastalani on Sahih Bukhari states that prior to owning the commodities by the seller, the sale is unlawful regarding

⁶⁰ Vernardos, *Islamic Banking and Finance in South-East Asia*. p. 39.

⁶¹ Indonesia, *UU Nomor 21 Tahun 2008 Tentang Perbankan Syariah* (/Law Number 21: SG No. 94, 2008). [View Item](#).

⁶² Governor of Bank Indonesia, *PBI No. 10/17/PBI/2008 Tentang Produk Bank Syariah Dan Unit Usaha Syariah* (Bank Indonesia Regulation No. 10/17/PBI/2008: SG No. 137 Dpbs, 2008). [View Item](#).

⁶³ Indonesia, *DSN No.04/DSN-MUI/IV/2000 Tentang Murabaha*.

⁶⁴ Ayub, *Understanding Islamic Finance*.

⁶⁵ *Ibid*.

Muhammad, Imam Shafi'e and several other Moslem jurists⁶⁶. However, many Moslem jurists, involve the Hanafi asserted that to conduct lawful commercial transactions, it is adequate that the commodities must exist and be totally recognized, there is no room for dispute and the physical ownership is not essential for a lawful and valid trade⁶⁷. Furthermore, it is determined in Majallah that the delivery of the commodity by the sellers is done once they place it aside for the buyer⁶⁸.

Generally, in contemporary Murabaha, Islamic bank might take the practice of Murabaha to Purchase Ordered (MPO) that is an agreement where Islamic bank, based on the request of clients, buy the commodities from dealer or a third party and sell it to the clients on a deferred payment base⁶⁹. The MPO need comes from the following aspects⁷⁰.

1. Islamic banks generally run business as intermediary institution. They would not be dealers, agents or grocers as the cost of warehouse or inventory storage may not be inexpensive.
2. The authority or central bank generally do not permit the Islamic bank to run trading as their main business. Most Islamic banks buy merely the commodities for which they obtain request from their customer.

Regarding these aspects, Islamic finance has been permitted not essentially to provide inventory of the commodities to be sold using Murabaha. According to the Sharia standard of Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) on Murabaha, it is allowable for Islamic finance to buy the commodities merely responding to their client's request⁷¹. However, this request might not be taken account into a promise by the customer to assure the commodities, except when the promise has been created in the due form⁷².

Considering all the points made, Islamic finance requires contract to run commercial transactions. It must not disobey both regulation and Islamic law. In murabaha agreements, even though Islamic banks does not own a house, it obeys Islamic principles in terms of the

⁶⁶ Irshad-al-Sari, *Sharah, Sahih Bukhari*, 4, p. 57

⁶⁷ *Ibid.* p. 136.

⁶⁸ Ali Ben Abi Bakr Al-Marghinani, *Al-Hidayah with Fath Al-Qadir*, 3rd ed. (Cairo: Amiria Press, 1942). pp. 58-59.

⁶⁹ Ayub, *Understanding Islamic Finance*.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² AAOIFI, *Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) Standard*. p. 113.

prohibition of uncertainty, gambling and interest. However, it is widely argued that there is a need to analyze and conduct further research for particular Islamic trade, notably murabaha.

3. Conclusions

Islamic finance must obey the Islamic Jurisprudence. The respective rules and norms of Islamic ethics must govern all business transaction. The Islamic system would not definitely approve injustice and any exploitation to both or any of the parties. Islamic law has several prohibitions. Therefore, Islamic bank must obey religious belief, particularly Murabaha in banking transaction.

In general, Islam forbids all business transactions that involve uncertainty or Gharar, Gambling or Maysir, Riba. The practice of commercial transactions that include Gharar, Riba, or Maysir would cause injustice. All trade would not valid once they include all or one of them. Therefore, Islam prohibits and blocks all transactions that's would not bring justice to the parties⁷³.

All things considered, Islamic banks need to enter into a trading transaction with customers. They could not conduct commercial businesses, specifically murabaha once it consists of Gharar, Riba and Maysir. Although there are several difficulties of murabaha, it must comply with Islamic principle in terms of the prohibition of Gharar, Riba, and Maysir. It is widely argued that not only Sharia supervisory board and regulators but also practitioners and Islamic financial institutions might need to be creative, innovative and active to develop both services and product based on Islamic principle, particularly murabaha, to augment Islamic business transaction more internationally and to tackle several difficulties effectively.

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⁷³ Anwar Ahmed Qadri, *Islamic Jurisprudence in the Modern World* (Bombay: Tripathi Private Limited, 1963). pp. 97-113.

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