

Taking Over Consumptive Loans Without Collateral: (Research Study on Bank Syariah Mandiri Lhokseumawe)

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Abstract

The title of this research is taking over consumptive loans without collateral; (research study on Bank Syariah Mandiri Lhokseumawe). The approach method used is a qualitative descriptive approach. The results of the study, the implementation of the takeover of Multipurpose Micro credit of Bank Mandiri to Multipurpose financing of Bank Syariah Mandiri (BSM) by using a murabahah financing contract carried out by BSM Lhokseumawe Branch did not meet the pillars and contract requirements stipulated in the Sharia Economic Law Compilation. In the credit conversion process, it prioritizes the benefit aspect, namely leaving the disadvantages of the interest-based banking system towards the benefit of financing in Islamic banks in accordance with sharia principles. Expecting the importance of fulfilling sharia principles in the process of taking over credit without collateral from conventional banking into sharia banking products, the DSN-MUI needs to issue a fatwa to regulate the conversion of credit without collateral from conventional banking into sharia banking products.

Keywords: consumer credit; financing; Islamic law, murabahah; sharia financial institution qanun.

Abstrak

Penelitian ini berjudul pengambilalihan kredit konsumtif tanpa agunan (studi penelitian pada bank syariah mandiri lhokseumawe). Metode pendekatan deskriptif kualitatif, yaitu penekanan terhadap aspek memahami lebih mendalam terkait permasalahan kemudian dilakukan generalisasi. Hasil penelitian, menunjukkan pelaksanaan take over kredit Serbaguna Mikro Bank Mandiri ke pembiayaan Multiguna Bank Syariah Mandiri dengan menggunakan akad pembiayaan murabahah yang dilakukan oleh Bank Syariah Mandiri Cabang Lhokseumawe belum sepenuhnya memenuhi rukun dan syarat akad yang terdapat pada Kompilasi Hukum Ekonomi Syariah. Namun karena adanya qanun LKS tersebut perlu dilakukan proses konversi kredit dengan mengutamakan aspek kemaslahatan yaitu meninggalkan kemudharatan sistem perbankan berbasis bunga menuju kemaslahatan pembiayaan di bank syariah berdasarkan prinsip syariah. Harapan pentingnya terpenuhi prinsip syariah dalam proses take over kredit tanpa agunan perbankan konvensional menjadi produk perbankan syariah, diperlukan bagi DSN-MUI mengeluarkan fatwa yang mengatur konversi kredit tanpa agunan perbankan konvensional menjadi produk perbankan syariah.

Kata kunci: hukum Islam; kredit konsumtif, murabahah, pembiayaan, qanun lembaga keuangan syariah.

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Introduction

The embodiment of a just and prosperous society in accordance with the values contained in Pancasila and the 1945 Constitution of the Republic of Indonesia (also known as the UUD 1945) is the goal of national development. The ongoing development process, especially in the economic sector, gives it a strategic role in efforts to improve the welfare function of the community. The government has special attention to economic issues, and for the Indonesian nation it is oriented towards development in the economic field in line with Indonesian development as stated in the constitutional basis which has been written in Article

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33 of the 1945 Constitution of the Republic of Indonesia (Widjajaatmadja dan Sholihah, 2019).

National development can be achieved as mandated in Pancasila and the 1945 Constitution of the Republic of Indonesia and become the responsibility of all Indonesian people. One of the forms in supporting national development is the participation of the community in developing an economic system that is in accordance with sharia norms. The sharia economic system has principles that are embodied in every business activity, including not being allowed to practice *maisir*, *gharar* and seeking profits illegally or falsely (usury). The Islamic economic system has similarities with the community economics system which refers to efforts to distribute evenly, independently and fairly for the whole community. The Islamic economic system applied to Islamic banking must refer to Islamic principles in carrying out its business activities, which in turn is often used as Islamic banking (Yusmad, 2018).

The implementation of the Islamic economy in Indonesia was announced at the time of the Minister of Finance's policy package in December 1983, the package provided the opportunity to provide 0% (zero) interest rate to banking institutions. This was followed by the Ministry of Finance's policy package in October 1988, the so-called October 1988 package, which basically facilitating the establishment of new banks. In 1991, a bank based on the principles of Sharia law was born, namely Bank Muamalat. Then, the Banking Law Number 7 of 1992 implicitly provided an alternative for banking businesses based on the principle of profit sharing (Mardani, 2015). After that, laws on Islamic finance were born, such as Law no. 41 of 2004 concerning Waqf, Law no. 19 of 2008 concerning Islamic Government Securities and Law no. 21 of 2008 concerning Islamic Banking, along with its implementation derivatives.

Aceh, as a province which specifically given authority, has ratified Qanun Number 11 of 2018 concerning Islamic Financial Institutions (LKS) as an effort to implement Islamic economics as a whole in financial institutions within the scope of Aceh Province. This is supported because the status of Aceh Province as a special region so that it is given the authority contained in Law no. 44 of 1999 concerning the Implementation of Special Privileges for the Province of Aceh. In addition, Aceh Province is also a special autonomous region as stipulated in Law no. 18 of 2001 concerning Special Autonomy for the Province of the Special Region of Aceh, which is the Province of Nanggroe Aceh Darussalam, which was later amended by Law no. 11 of 2006 concerning the Government of Aceh.

The privileges of the province of Aceh are regulated in Law no. 44 of 1999 concerning the Privileges of the Province of the Special Region of Aceh. In Article 1 number 8 states that privilege is a special authority in the implementation of religion, customs, education, and the role of the ulema in establishing regional policies. The implementation of religious life is implemented by carrying out Islamic law for its believers in social life (For further explanation, see Law Number 44 of 1999 concerning the Implementation of Special Privileges for the Province of Aceh).

Explanation regarding the implementation of Islamic Sharia is further regulated in Law no. 11 of 2006 concerning the Government of Aceh, it is stated in Article 125 that: 1) The Islamic Sharia implemented in Aceh are *aqidah*, *syar'iyah* and *akhlaq*, 2) Stating that Islamic Sharia as contained in section (1) are worship, family law, civil law, criminal law, justice, education, *da'wah*, and *syiar*, as well as the defense of Islam, 3) Stating that the implementation of Islamic Sharia then regulated through Aceh Qanun (Law Number 11 of 2006 concerning the Government of Aceh).

Based on these laws and regulations, the Province of Aceh has a clear legal basis for the application of Islamic Sharia in the lives of people who are in the territory of Aceh. One of them is regulation regarding the economy which is in line with Islamic Sharia, known as Sharia Economics, including Islamic Banking.

In Aceh Qanun No. 8 of 2014 concerning the Principles of Islamic Sharia there is a rule regarding Islamic Financial Institutions (*LKS*), which states that financial institutions conducting their business activities in Aceh must be guided by Sharia principles (Article 21 section (1) Aceh Qanun Number 8 of 2014 Concerning the Principles of Islamic Sharia). The arrangements regarding Islamic Financial Institutions are further regulated through Qanun Number 11 of 2018 which provides a time limit for all financial institutions in Aceh to gradually switch to financial institutions with Sharia principles as stated in Article 65, it is mentioned that "At the time this Qanun comes into effect, financial institutions operating in Aceh are required to comply with this Qanun no later than 3 (three) years after this Qanun is enacted" (Article 65 Aceh Qanun Number 11 of 2018 Concerning Islamic Financial Institutions).

All financial institutions, including banking, insurance, pawnshops, multi-finance and other financial institutions, must operate based on Sharia principles in early 2022. The ratified Qanun for Islamic Financial Institutions required conventional banks operating in Aceh province to make changes to their operating systems according to Sharia principles. Those changes can be implemented as regulated on Law No. 21 of 2008 concerning Islamic Banking, in Article 5 section (6) it is stated that "Conventional Bank can only change their business activities to be based on *Syaria* principle by the permit of Bank Indonesia." This Aceh Qanun became role model for the world of financial institutions in the application of sharia principles in complete way (Utamy dan Hasan, 2020).

Following the provisions of the enactment of Qanun Islamic Financial Institutions in Aceh, Bank Mandiri must carry out the conversion of conventional banking credit into sharia financing through a *murabaha* contract at Bank Syariah Mandiri. *Murâbahah*, which is one of the types of buying and selling transactions that are trustworthy in Islamic law, is the most dominant contract scheme used in Islamic banking practices in Indonesia (Lathif, 2012). Contract of *murabahah* requires the existence of goods as objects that are traded as the basis of the contract. This raises problems in determining the object of financing when making credit conversions because the object of credit in conventional banks is in the form of money, while money cannot be the object of financing in Islamic banks.

Sharia law regarding the transfer of customer debt from interest-based banks to sharia-based banks has been regulated through the Fatwa of the National Sharia Council of the Indonesian Ulema Council (*DSN-MUI*) Number 31/DSN-MUI/VI/2002 concerning Debt Transfers. The fatwa regulates the contract mechanism in 4 (four) alternatives. The conversion of credit from Bank Mandiri to Bank Syariah Mandiri uses an alternative contract, namely, first, the Islamic Financial Institution hands over the *qardh* to the customer, see (Fatwa of the National Sharia Council-MUI Number 31/DSN-MUI/VI/2002 concerning Transfer of Debt). Customers who have received the *qardh* (Trisadini Praastinah Usanti, 2018) then pay off the debt. Then, the goods purchased with debt will be fully owned by the customer; Second, the customer sells the item to an Islamic Financial Institution and the money from the sale is used by the customer to pay off the *qardh*; Third, Islamic Financial Institution in the form of *murabahah*, the goods they own are handed over to the customer who repays them in installments.

Provision of assets by customers when transferring debt from interest-based banks to sharia-based banks creates difficulties for conventional bank credit customers, because when disbursing credit at conventional banks, especially for Multipurpose Mandiri loans, it is usually intended for people who have a steady income, customers are given freedom to use money from credit disbursements, it is not required to purchase certain goods or assets.

When transferring conventional bank credit to Islamic banks with a *murabahah* contract for customers who do not have assets that can be used as objects of sale and purchase, Bank Syariah Mandiri continue to transfer credit to Islamic financing through the object of the contract determined by the bank to expedite the conversion of conventional bank credit to Islamic bank financing. The realization of all financing products in the activities of the sharia micro unit is the financing objective of the customer, then proposing financing in the form of a contract, namely *murabahah bil wakalah*. The contact of *murabahah* should be the sale and purchase contract that has nothing to do with financing. However, that form of the sale and purchase then used in Islamic banking products that collaborate with several other concepts so that it become financing contracts.

This is because Islamic banks have not been able to provide customer needs in the form of goods, as well as other needs in the form of ready stock goods. Moreover, if the Islamic Bank using a buy and sell contract, there will be a risk of loss if no one buy the goods provided by the bank. In order to avoid that situations, Islamic Banks use *wakalah* contracts to customers who are representatives of Islamic banks to procure goods according to customer needs (Zulfiyanda et al., 2020). Judging from the aspect of other types of agreements in civil law, bank credit agreements are classified as anonymous types of agreements (*onbenoemde overeenkomst, inniminaat contracten*) (Usanti, 2020).

An agreement in Islam is said to be valid if the *Rukn* and conditions of it have been fulfilled, known as *aqad shahih* (Fadhli, 2016). *Rukn* is something that absolutely must be fulfilled for something, event or action. Furthermore, a condition is something that must exist for something, an event or an action. *Rukn* is absolute and it must be met, while conditions may have exceptions (Khatibul

Umam, 2017). The *Rukn* of an *Aqad* based on the *ijtihad* of the Ulema are first, there is a binding agreement; second, there are contracting parties; third, there is a contract object; and fourth, there is a purpose (Djamil, 2012).

Research Problems

Based on the description above, it is necessary to conduct further studies to find out the process of converting conventional bank credit to Islamic bank financing with a takeover credit scheme, specifically credit for private employees and civil servants without fixed asset collateral but with the guarantee of the original Employee Appointment Decree (*SK*). This becomes the author's reason for conducting a study entitled "Taking Over Consumptive Loans Without Collateral: (Research Study on Bank Syariah Mandiri Lhokseumawe).

Research Methods

The type of research used in this study is empirical juridical using a qualitative descriptive approach. Sources of data as a reference for this research were interviews and literature studies, through secondary legal materials.

Discussion

Taking Over Consumptive Loans Without Collateral from Conventional Bank to Islamic Bank using *Murabahah* Contract

Procedures in the process of converting Bank Mandiri Micro Multipurpose Loans to Bank Syariah Mandiri Multipurpose Financing when compared with the provisions in the Fatwa of the National Sharia Council-MUI Number 31/DSN-MUI/VI/2002 and the provisions on Product Codification and Activities of Sharia Commercial Banks and Sharia Business Units has complied with the fatwa which is summarized in the process as follows:

- a. The customer has signed the credit conversion document.
- b. Bank Syariah Mandiri carry out the conversion process using alternative contract type I in accordance with the provisions of the National Sharia Council-MUI's Fatwa and the provisions of the Financial Services Authority (*OJK*).
- c. The type of contract used are
 - 1) *Qard* contract which is a loan to customers to pay off multipurpose loans
 - 2) *Al Bai* contract is used for customers who sell their assets to Bank Syariah Mandiri to pay off loans or bailout funds used to pay off customers' Bank Mandiri Multipurpose Micro loans. The assets being sold are assets purchased from Multipurpose Micro credit disbursement funds from Bank Mandiri.
 - 3) *Murabahah* contract is used for providing loans to customers to buy back assets that have been sold to Bank Syariah Mandiri so that these assets can become the property of the customer again.

Table 1. Financing Contract Scheme

Financing Purposes	Contracts		
	Murabahah/ Qard Wal Murabahah	Ijarah/Qard Wal Ijarah	Musyarakah Munthanaqisah (MMQ) Refinancing
New financing for goods purchases	v		v
New financing for service use (education, health, etc.)		v	
Top Up	v	v	v
Take over conventional financial institutions	v	v	v
Take over Islamic financial institutions			v
Take over + Top Up conventional financial institutions	v 2 Loan	v 2 Loan	v 1 Loan
Take over + Top Up Islamic financial institutions			v 1 Loan

Based on the explanation above, Bank Syariah Mandiri-Lhokseumawe Branch carries out the financing process/credit granting process to its customers using a *murabahah wakalah* contract because in this process there is a *murabahah* preceded by a *wakalah* contract that is signed. A *wakalah* contract is required if the bank represents or authorizes the customer to become the bank's representative in purchasing assets or customer needs that are agreed to be financed by the bank so that the bank can avoid the risk of wrong purchases of goods. The actions of Bank Syariah Mandiri-Lhokseumawe Branch are in accordance with sharia principles. Furthermore, the financing process for the contract has met the requirements for a valid contract and *ruk'n* of the contract.

The following is an analysis of the process of converting Multipurpose Micro loans to Multipurpose Bank Syariah Mandiri financing based on aspects of Agreement Law, Legal Protection for Banks and Customers and Benefit:

a. Agreement Law Aspect

Based on the legal terms of the agreement as stated in Article 1320 of the Civil Code, the subject of the agreement is the individual debtor with Bank Syariah Mandiri. The requirements as the subject of the agreement have been fulfilled. The object of the agreement on the *al Ba'i* contract and the *murabahah* contract are assets owned by the customer from Bank Mandiri's Micro Multipurpose Credit Fund. The customer is not asked to show proof of ownership of the asset, only to be asked orally and written into the financing contract in the form of an *al Ba'i* contract and a *Murabahah* contract, so that the *ruk'n* and legal terms of the contract are not fulfilled.

b. Legal Protection Aspect.

Legal protection for Islamic banks in this credit conversion is that the customer whose credit is converted is a customer who has a good financial track record so that he has a good character and good ability to pay obligations because the customer has a fixed income in the form of a monthly salary. This Sharia Bank Multipurpose Financing is a loan without collateral, so customers are also required to pay insurances in the form of life insurance and default insurance so that the bank has good risk mitigation to avoid bad credit.

For legal protection for customers, legislation in Indonesia already has good regulations on the protection of all consumer rights, starting from Law Number 8 of 1999 concerning Consumer Protection, *SE-OJK* concerning Consumer Protection in the financial services sector, *PBI* concerning Settlement of Customer Complaints and *PBI* regarding banking mediation, so that in terms of preventive and repressive legal protection there are already rules that regulate it.

c. Benefit Aspect

Converting conventional bank credit to Islamic bank financing is an act towards good, because customers leave the conventional bank financial system to use the Islamic financial system. The activity of taking over customer debt from conventional bank credit to financing at Islamic banks is a good deed, customers feel more comfortable and this can provide peace of mind because they carry out their financial activities in the form of loans or debt according to Sharia principles to Islamic banks.

Transferring customer loans to financing in Islamic banks encourages growth and advances the financial system in Aceh. So that loans and community business activities as a result of the enactment of the Qanun on Islamic Financial Institutions are still managed by Islamic banks in Aceh, without having to be taken out of Aceh due to the closure of Conventional Banks in Aceh which has caused them to move their managed assets out of Aceh.

The implementation of conventional bank credit conversion is a mandate from the Qanun of Islamic Financial Institutions. The Qanun prioritizes the principle of justice, in accordance with Islamic teachings, namely the absence of injustice (Utamy dan Hasan, 2020). Islamic banking products offered to customers are different from the products offered by conventional banks. Among other things, financing with a *murabahah* contract, namely, a sale and purchase agreement, in this case it is an Islamic bank with the seller, and the customer as

the buyer, in this case it is the customer who uses the agreed margin (profit). Whereas in conventional banks the product is in the form of a money loan that must be returned plus an excess of the loan principal. This excess is then known as interest, and interest in Islam is classified as usury which is unlawful.

Banking products in the form of *murabahah* financing are well known among the public because they provide benefits and conveniences for customers, such as the convenience for customers in obtaining houses that have their own rights, ease of obtaining vehicles, electronic equipment and so on, all of which can be accommodated by using a *murabahah* financing contract.

Bank Mandiri Micro Multipurpose Credit is an interest-based bank and Bank Syariah Mandiri Multipurpose Credit is a sharia principal bank that does not ask for collateral in the form of movable or immovable objects, the bank asks customers only to submit *SK* documents (Certificate) for Appointment of Permanent Employees.

Collateral is a liability given by the debtor or a third party to the creditor in order to guarantee the fulfillment of the obligations as agreed in the contract (Badruzaman, 2020). Initially, guarantees and collateral are two interchangeable terms. Collateral simply means dependence on the loan it receives (Wangawidjaja, 2012). The term guarantee in civil law is explained in Article 1131 of the Civil Code, as well as Article 8 of Law Number 10 of 1998 concerning Banking. However, these provisions do not clearly define the meaning of collateral and both state that collateral is related to debt-receivable issues. Thus, collateral is defined as an agreement between creditors and debtors. The debtor uses a certain amount of his assets to pay debts based on legislation, if there is a delay in paying the debtor's debt within a certain period of time (Gatot, 2009).

Guarantees in terms of banking law have a definition as contained in Article 1 number 23 of the Banking Law, namely additional guarantees provided by customers to banks when providing credit or financial facilities. Even so, Article 1 number 26 of the Sharia Banking Law, states that collateral is additional guarantee, in the form of movable or immovable objects, and the owner of the guarantee must submit it to the Sharia Bank and/or Sharia Business Unit in order to guarantee the settlement of obligations that must be carried out by the customer as beneficiary of financing facilities.

However, when referring to Law no. 10 of 1998 does not specifically mention the obligation to provide guarantees for credit. In Article 8 section (1) of the Law it is only stated, the provision of credit or financing carried out by Commercial Banks must be based on the confidence in an in-depth analysis with the intention and ability of the customer to pay off his obligations based on the agreement he has agreed (See Article 8 section (1) Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking).

A very significant difference regarding the explanation of collateral based on existing regulations in Indonesia, in Law no. 7 of 1998 has explained that collateral is not an obligation in providing credit and financing. However, in Article 8 of Law no. 10 of 1998 expressly explained that in order to realize a provision of credit and financing, the customer must provide guarantee/collateral, so that it is in sync with

Article 1131 of the Civil Code which states that there is an obligation to provide guarantees for each credit, the guarantee/collateral exists because of the consequences or obligations of the prospective customer.

With a guarantee, a debtor can carry out his obligations to pay off debts to creditors if in the future he is unable to pay his debts before his debts are paid off to creditors so as to convince creditors to lend money to debtors. Debtors who guarantee movable or immovable property to the creditor as collateral for their debts at a later date if they do not have the ability to pay and the object can be sold to replace the fulfillment of the creditor's receivables. Usually lending and borrowing activities in the banking world are carried out with customers where instruments are always used to provide debt guarantees by the debtor to the bank as the creditor.

Thus, the types of Banks Mandiri Multipurpose Micro loans and Bank Syariah Mandiri Multipurpose Financing that only ask customers to submit the original Decree regarding the appointment of permanent employees belonging to the customer to the Bank are included in the type of credit or consumptive financing without collateral because the decree on permanent employee appointments cannot be traded. to cover the debtor's debt in the event of default. According to the Indonesian Bankers Association, collateral-free financing is financing provided without a second way out in the form of fixed assets. All financing offered to customers must pay attention to the ability of customers receiving financing facilities to pay installments before they are due, or carried out with protection from insurance that uses sharia principles (Ikatan Bankir Indonesia, 2015).

Furthermore, referring to SE-OJK No. 36/SEOJK.03/2015 regarding Products and Activities of Sharia Commercial Banks and Sharia Business Units in Appendix V contains requirements for taking over debt or financing, there is a provision that the credit being transferred must have underlying assets. That is, in the process of taking over consumer credit from interest-based banks to sharia-based banks, they must have underlying assets. This is in line if a *murabahah* agreement is used to take over credit, it is necessary to have an object that can be used as a basis for buying and selling transactions based on Islamic finance principles. In other words, if a customer wishes to transfer debt from a conventional bank to an Islamic bank, the customer must have an underlying asset as the basis for transferring his debt.

Financing provided by Islamic banks to customers based on a sale-purchase-based *murabahah* contract must be in accordance with the needs or capabilities of the customer. This is stated in Article 14 section (6) of Aceh Qanun Number 11 of 2018 which explains that basically a customer who can apply for credit must be in accordance with his abilities and needs by taking into account several things, namely the credit application must be in accordance with the needs, the purpose of the credit application must be meet the requirements set by Islamic banks.

Furthermore, Islamic banks are also required to carry out transparency and publication of their reports. This is in accordance with PBI No. 14/14/PBI/2012 concerning Transparency and Publication of Bank Reports. In this provision, it is desired that the reporting of the financial condition of Islamic banks be carried out in a transparent manner. Transparent means that the bank is obliged to prepare

and present financial reports. Financial reports as a form of management responsibility for parties who have an interest in the performance of the bank in achieving it during a certain period (Faisal, 2015).

Referring to the explanation above, that the process of taking over consumer credit from conventional banks to Islamic banks by utilizing a *murabahah* contract in the takeover process must have an underlying asset as the basis for the transaction. After the consumer credit take over process has been completed from conventional banks to Islamic banks, the customer also has the obligation to pay installments of financing to Islamic banks according to the time period. The entire process of taking over consumer credit must comply with sharia principles. The contract used in carrying out the business activities of Bank Syariah Mandiri-Lhokseumawe Branch used a standard contract (standard contract) made by the bank, and the customer was bound by this standard contract. This standard contract was made on a "take it or leave it" basis, meaning that the bank, as the party that made the standard contract format, has prepared and determined the terms and clauses of the agreement. Thus, the contract forced the customer to choose between carrying out transactions or financing with the bank and he must accept all the terms and agreements as stated in the contract, or not agree to continue the contract as specified in the standard contract.

Determination of Financing Objects on the Take over of Consumptive Credit Without Collateral Using a *Murabahah* Contract

The process of taking over consumer credit without collateral refers to the Fatwa of the National Sharia Council Number 04/DSN-MUI/IV/2000 concerning *Murabahah*, the contract system uses *murabahah* financing. The terms of use of the contract are:

1. Regarding *murabahah* financing at banks based on sharia principles, it is explained that:
 - a. There is no usury on *murabahah* contract;
 - b. In the process of buying and selling, the object is in the form of goods and it must not be prohibited by law;
 - c. The process of financing from start to finish is charged to the Bank;
 - d. Goods to be taken over for consumer credit must be transferred to the name of Bank Syariah Mandiri-Lhokseumawe Branch first until the Bank can exercise the use rights of the goods, after that the goods can then be transferred to the name of the customer whose goods have been taken over for consumer credit by Bank Syariah Mandiri-Lhokseumawe Branch;
 - e. The bank communicates matters related to the purchase of goods, including the price of capital, profits for the bank and then the price or fee that must be paid by the customer;
 - f. The bank sells goods to customers based on the purchase price plus the profit specified in the contract based on the agreement of both parties;
 - g. The customer pays the agreed price of the goods within a certain period of time;

- h. To avoid damage to the contract, the bank can sign a special contract with the customer;
 - i. If the bank purchases goods through a third party on behalf of the customer, the bank must perform a *murabahah* sale and purchase contract after the goods become the property of the bank.
2. Regarding *murabahah* contract to the customers, it is regulated as follows:
- a. The customer makes a request and agrees to buy goods or property for the bank;
 - b. If the bank agrees, then the bank must first buy the goods that have been ordered from the merchant;
 - c. Banks buy goods for the customers and customers must accept it;
 - d. Banks are allowed to ask customers to make prepayments when signing an initial order contract.
 - e. If the customer refuses to make a purchase, the actual bank fee must be paid from the deposit;
 - f. If the value of the initial payment cannot cover the bank's losses, the bank may ask the customer to compensate for the remaining losses.
 - g. If the prepayment uses an *urbun* contract and not a prepayment, then:
 - 1) If the customer purchases, he only pays the remaining price,
 - 2) If the customer cancels the purchase, it becomes a credit note from the bank to the maximum loss bank account, and if this is not enough, the customer must pay the balance in full.

Based on the Fatwa of the National Sharia Council-MUI Number 31/DSN-MUI/VI/2002 concerning Transfer of Debt, in its preamble it is stated that conventional bank customers can transfer credit (take over) to Islamic banks. Take over can be done between conventional banks or fellow Islamic banks, as well as from conventional banks to Islamic banks or vice versa (Saraswati dan Hidayat, 2017). This is a form of financial services according to customer needs, namely helping customers to convert their non-sharia transactions into sharia-based transactions, so that Islamic banks are required to facilitate these customer needs.

Then further, in the first dictum letter a Fatwa Number 31/DSN-MUI/VI/2002, the transfer of debt is meant to transfer customer debt from banks based on the principle of interest to banks based on sharia principles. The first step that must be carried out by prospective customers is to consult with Islamic banks regarding the remaining payments and types of loans made to interest-based banks.

After consulting with the interest-based bank and already knowing the remaining obligations that must be repaid, then the Islamic bank will then carry out an analysis regarding the possibility of providing or not financing the object of the credit agreement that has been carried out at an interest-based bank. This treatment is considered important so that Islamic banks carry out business activities in accordance with sharia principles. This is stated in Article 24 section (1) letter a of Law no. 21 of 2008 concerning Islamic Banking, namely Islamic commercial banks are prohibited from carrying out business activities that are contrary to sharia principles.

Islamic banking is obliged to do this in order to guarantee the principle of compliance with sharia in the transactions it carries out. It is further emphasized in the explanation of Article 2 of the Sharia Banking Law, namely business activities based on sharia principles are business activities that do not have elements of usury, *maisir*, *gharar*, *haram* and *zalim*. Analysis carried out by Islamic banks must be based on the prudential principle, risk mitigation and sharia principles. If an Islamic bank agrees to transfer credit from an interest-free bank to an Islamic-based Islamic bank, then there are several ways that must be implemented based on the policies of each Islamic bank to choose the scheme used in carrying out the transfer.

Islamic banks can provide financing to customers in the form of *qardh* contracts for the purchase of goods or objects of credit agreements at interest-based banks that have received repayment, so that the objects legally belong to the customer. Furthermore, Islamic banks buy back the object so that the customer can pay off his *qardh* contract. Next, to obtain financing, the Islamic bank sells the object to the customer using a *murabahah* contract, by delaying the installments. Based on the above mechanism, the regulations that apply are in accordance with the Fatwa of the National Sharia Council of the Indonesian Ulema Council Number: 19/DSN-MUI/IV/2001 concerning *Al-Qardh* and the Fatwa of the National Sharia Council of the Indonesian Ulema Council Number 04/DSN-MUI/IV /2000 on *Murabahah*.

Based on the results of the discussion above, the object of financing in the takeover of unsecured consumer loans from conventional banks to Islamic banks using a *murabahah* (buy and sell) contract is goods/business/assets that are the object of credit to conventional banks (old creditors). For example, a house or car that has become the object of credit and will be taken over for consumer credit to the Bank Mandiri Syariah-Lhokseumawe Branch, the house/car will also be the object of the consumer credit take over financing.

If the object of credit at a conventional bank (old creditor) is money (credit disbursement fund), then the object for take over financing is goods owned by the customer purchased from the conventional bank's credit money/loan funds. If the funds from the disbursement of conventional bank loans are used not for the purchase of goods, then the object of the takeover financing contract at an Islamic bank is other goods owned by the customer that can be traded in accordance with Islamic finance principles.

Conclusion

Based on the discussion above, there are several things that can be concluded to answer the problems in this study, namely:

1. The implementation of Bank Mandiri Micro Multipurpose Credit take over to Bank Syariah Mandiri Multipurpose financing using a *murabahah* financing contract as stipulated through the National Sharia Council-MUI Fatwa Number 31/DSN-MUI/VI/2002 concerning Debt Transfers made by Bank Syariah Mandiri-Lhokseumawe Branch has not fully fulfilled the *ruk'n* and the terms of the contract as stipulated in Articles 22 and 24 of the Compilation of Sharia Economic Law, because in real practice the Bank Syariah Mandiri-

Lhokseumawe Branch use a *murabahah* contract with the object of the contract is in the form of goods which did not meet the requirements because the type of goods agreed upon between the bank and the customer to carry out a sale and purchase transaction was only in the form of the customer's verbal information which later be used as the underlying of the sale and purchase transaction so that the *rukn* of the *murabahah* contract are not fulfilled.

There were several things that made the credit agreement to the sharia financing contract continued, first, because of the short time given, namely 3 (three) years to convert credit to the sharia financing system as stipulated in Article 65 of Qanun Aceh Number 11 of 2018. Second , there were no regulations in the form of laws and regulations governing the implementation of changes to the banking system in Aceh to become an Islamic financial system other than Qanun Number 11 of 2018 and third, that the purpose of converting conventional bank credit to Islamic bank financing was one of the efforts to realize the essence of *maqashid Syariah*, namely realizing benefit and avoiding or rejecting damage (*jalb al-mashalih wa daf'u al-mafasid*), where customers leave the conventional banking system which is based on an interest system which is classified as usury, and usury in Islamic law is prohibited (*haram*).

2. The object of financing for unsecured consumer credit takeover from interest-based banks to sharia-based banks using the *Murabahah* (sale and purchase) contract is goods/business/assets that are the object of credit at Conventional Banks (old creditors). For example, a house/car that has become the object of credit and will be taken over for consumer credit to the Bank Mandiri Syariah-Lhokseumawe Branch, then the house/car will also be the object of the consumer credit takeover financing. If the object of credit at a Conventional Bank (old creditor) is money (credit disbursement fund), then the object for take over financing is goods owned by the customer purchased from the conventional bank's credit money/loan funds. Or if the funds from the disbursement of conventional bank loans are used not to purchase goods, then the object of the takeover financing contract at an Islamic bank is other goods owned by the customer that can be traded in accordance with Islamic finance principles.

Suggestion

1. Given the importance of fulfilling sharia principles in the process of taking over conventional banking collateral-free credit into sharia banking products, the MUI National Sharia Council needs to issue a fatwa to regulate the conversion of conventional banking collateral-free loans into sharia banking products because of the DSN-MUI Fatwa Number 31/DSN-MUI /VI/2002 concerning Debt Transfer has not yet regulated the conversion of collateral-free credit so that it becomes the basis for the Financial Services Authority to apply positive legal regulations which will serve as a guide for Islamic banks to convert collateral-free loans to Islamic financing.
2. The need for serious attention for companies engaged in Islamic financial institutions such as Islamic banking, Islamic insurance and other Islamic financial institutions to always improve the ability and understanding of Human

Resources in Islamic financial institutions, especially Islamic banking regarding Islamic financial principles due to educational background. Many human resources in sharia financial institutions do not have a background in sharia economics or Islamic law, even though human resources in the sector of sharia financial institutions are very important because the application of sharia financial principles can be carried out properly if carried out by trained human resources. and have a good understanding of Islamic finance principles.

References

- Badruzaman, M. D. (2020). Beberapa Permasalahan Hukum Hak Jaminan. *Jurnal Hukum Bisnis*, 11.
- Djamil, F. (2012). *Penerapan Hukum Perjanjian dalam Transaksi di Lembaga Keuangan Syariah*. Sinar Grafika.
- Fadhli, A. (2016). Tinjauan Hukum Islam terhadap Penerapan akad As-salam dalam Transaksi e-commerce. *Mazahib*, 1(9).
- Faisal, M. (2015). Metode Anuitas dan Proporsional Murabahah sebagai Bentuk Transparansi dan Publikasi Laporan Bank. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 26(3), 382. <https://doi.org/10.22146/jmh.16032>
- Gatot, S. (2009). *Perbankan dan Masalah Kredit Suatu Tinjauan dibidang Yuridis*. Renika Cipta.
- Ikatan Bankir Indonesia. (2015). *Mengelola Bisnis Pembiayaan Bank Syariah*. Gramedia Pustaka Utama.
- Khatibul Umam, U. S. B. (2017). *Perbankan Syariah Dasar-Dasar dan Dinamika Perkembangannya di Indonesia*. Rajawali Press.
- Lathif, A. A. (2012). Konsep dan Aplikasi Akad Murabahah. *AHKAM: Jurnal Ilmu Syariah*, 12(2).
- Mardani. (2015). *Asoek Hukum Lembaga Keuangan Syariah di Indonesia*. Prenadamedia Group.
- Saraswati dan Hidayat. (2017). Implementasi Hybrid Contract pada take Over Pembiayaan Hunian Syariah dari Bank Konvensional ke Bank Syariah dalam Perspektif Hukum Islam. *Jurnal Jurisprudence*, 81.
- Trisadini Praastinah Usanti. (2018). *Analisis Akad Pembiayaan Qard dan Upaya Pengembalian Pinjaman di Lembaga Keuangan Mikro Syariah*. 101–110.
- Usanti, S. (2020). *Hukum Perbankan*. Prenadamedia Group.

- Utamy dan Hasan. (2020). Konsep Keadilan Pada Qanun Aceh Nomor 11 Tahun 2018 Tentang Lembaga Keuangan Syariah. *Jurnal Studi Islam Dan Sosial*, 14(2), 121-132.
- Wangsawidjaja. (2012). *Pembiayaan Bank Syariah*. Gramedia Pustaka Utama.
- Widjajaatmadja dan Sholihah. (2019). *Akad Pembiayaan Murabahah di Bank Syariah dalam Bentuk Akta Otentik Implementasi Rukun, Syarat dan Prinsip Syariah*. Inteligencia Media p.1 Deepublish.
- Yusmad, M. A. (2018). *Aspek Hukum Perbankan Syariah dari Teori ke Praktik*. Deepublish p.100.
- Zulfiyanda, Z., Faisal, F., & Manfarisah, M. (2020). Akad Pembiayaan Murabahah Bil Wakalah Pada Pt. Bank Rakyat Indonesia Syariah Lhokseumawe. *Suloh:Jurnal Fakultas Hukum Universitas Malikussaleh*, 8(1), 12. <https://doi.org/10.29103/sjp.v8i1.2485>