

## The Wadī'ah and Murābahah Contracts in Islamic Banking: The Recognized and the Unrecognized Legally Transformation

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### Abstract

The mu'āmalah fiqhiyyah contracts that underlie Islamic bank products have transformed from their basic form. Problems arise when there are differences in treating the same form of transformation. The purpose of this study is to construct the transformation of wadī'ah and murābahah contracts in savings and financing products at Islamic banks, then analyze them from the perspective of Islamic law. This research is qualitative, with the main data sources being literature and interviews with Islamic banking practitioners. Literature in the form of books and the results of previous research regarding contracts in Islamic bank products. The interviews were conducted with some managers of Islamic commercial banks (BSI Jakarta) and Islamic people's financing banks (BPRS BAS Purwokerto). Data analysis was carried out by the triangulation method. Wadī'ah contracts in savings products and murābahah sales and purchase contracts in financing products at Islamic banks have essentially undergone the same transformation, which is both transformed into contracts with debt substance (qard) where several procedural indicators corroborate this. However, it turns out that Islamic banks are different in responding to it. The transformation in the wadī'ah contract is recognized through the application of procedural provisions on the wadī'ah savings product, while the transformation in the murābahah contract is not recognized, which is indicated by the justification of the profit (murābahah) received by the bank. This research provides a new perspective on the study of the transformation of mu'āmalah contracts in Islamic bank products, which has so far been rarely carried out.

## INTRODUCTION

*Wadī'ah* is a non-profit contract where the caretaker (*muwaddi'*) preserves goods for the benefit of the owner (*muwadda'*),<sup>1</sup> who gains rewards in the hereafter.<sup>2</sup> This forms the basis for *wadī'ah* savings and giro in Islamic banking, where depositors earn no profit and funds do not increase.<sup>3</sup> While banks may give bonuses, they must not promise them initially to avoid resembling interest.<sup>4</sup> The transformation of a *wadī'ah* (entrustment) contract into a *qard* (receivables) contract in Islamic banking involves changing the object from a non-liquid asset to money. This allows banks to use the funds for profit-generating financing. Banks can give bonuses to depositors but must not promise this initially. Consequently, the provisions for *qard* contracts apply instead of those for *wadī'ah* contracts, meaning *wadī'ah* savings in Islamic banking have substantively become *qard* contracts. For information, based on data until October 2024, the total wadiah savings in the Islamic bank industry amounted to Rp. 63.56 trillion, of which 78.6% were concentrated in BSI. The growth per year of BSI's wadiah savings is 2023-2024 of +20.97%.<sup>5</sup>

*Bay' al-murābahah* in Islamic banks involves selling goods at a higher price than the acquisition cost, with sellers disclosing the acquisition price to buyers. However, in practice, *murābahah* contracts often resemble credit transactions. Banks provide funds for customers to purchase goods and repay the bank in instalments, including a profit margin. This setup turns the *murābahah* contract into a receivable debt contract, like conventional credit. Despite differences in calculation methods, any excess charged to the debtor is considered *ḥarām* in Islamic law.<sup>6</sup> However, The National Shariah Board of the Indonesian Ulama Council (DSN-MUI) and Sharia supervisory boards in Islamic banks worldwide do not recognize the *murābahah* contract as a receivable debt, despite its current implementation. Based on OJK Sharia Banking Statistics data as of February 2024,

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<sup>1</sup> Abd al-Raḥmān Al-Jazīrī, *Kitāb al-Fiqh 'alā al-Mazāhib al-Arba'ah* (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003), III: 219.

<sup>2</sup> Muṣṭafā Aḥmad al-Zarqā', *Al-Fiqh al-Islāmī fī Thawbīh al-Jadīd: al-Madkhal al-Fiqhī al-'Āmm* (Damaskus: Alif Bā' al-Adīb, 1968), I: 548.

<sup>3</sup> Muslih Candrakusuma, "Pendekatan Kritis Implementasi Akad Wadī'ah Pada Perbankan Syariah Indonesia," *FALAH: Jurnal Ekonomi Syariah* 1, no. 2 (2016), <https://doi.org/10.22219/jes.v1i2.3679>.

<sup>4</sup> Yenni Puspita Sari and Zainuddin Zainuddin, "Pemberian Hadiah Pada PT BPRS Gajahtongga Kotopiliang Kota Sawahlunto," *Al-Bank: Journal of Islamic Banking and Finance* 1, no. 2 (2021), <https://doi.org/10.31958/ab.v1i2.3307>.

<sup>5</sup> Rudi Sukmana, "BSI Siap Perbesar Tabungan Wadiah Manfaatkan Nasabah Haji," *Info Ekonomi*, n.d., [https://infoekonomi.id/2024/10/bsi-siap-perbesar-tabungan-wadiah-manfaatkan-nasabah-haji/?utm\\_source=chatgpt.com](https://infoekonomi.id/2024/10/bsi-siap-perbesar-tabungan-wadiah-manfaatkan-nasabah-haji/?utm_source=chatgpt.com).

<sup>6</sup> Jamal Abdul Aziz, "Transformasi Akad Muamalah Klasik dalam Produk Perbankan Syariah," *Al-Tahrir: Jurnal Pemikiran Islam* 12, no. 1 (2012): 21, <https://doi.org/10.21154/al-tahrir.v12i1.45>.

murabahah contracts account for **43.88%** of total Islamic banking financing.<sup>7</sup> According to data compiled from BI & OJK (2002–2017 period), the share of murabahah in Islamic commercial banks continues to be stable in the range of **54–70%** of total financing.<sup>8</sup> Although the proportion has decreased slightly, murabahah still plays a dominant role in the long run.

This inconsistency, rejecting the qard substance in *murābahah* contracts while recognizing transformation in *wadī'ah* contracts, raises questions about why contract transformation is accepted for *wadī'ah* savings but not for *murābahah* financing. This paper will explore the transformation of *wadī'ah* and *bay' al-murābahah* contracts from jurisprudence to bank products and their interpretation in Islamic law.

Many works discuss *wadī'ah* and *bay' al-murābahah* contracts in both classical and modern fiqh, but few critically examine their implementation in Islamic banking. Notable critical works include those by Candrakusuma and Ghozali (2016),<sup>9</sup> Sari and Zainuddin (2021), Huda (2015), Afif (2014), Sulaiman, Prabowo, and Usanti (2013). Candrakusuma and Ghozali argue that *the wadī'ah yad al-ḍamānah* contract in savings is more beneficial to banks, transforming into a debt contract.<sup>10</sup> Sari and Zainuddin find that promised bonuses violate DSN-MUI fatwā.<sup>11</sup> Huda also notes the transformation of *wadī'ah* to debt contracts. Afif states that profits from deposited goods should be alms. Sulaiman finds *murābahah* financing similar to conventional credit.<sup>12</sup> Prabowo highlights differences between Indonesia and Malaysia's *murābahah* practices.<sup>13</sup> Usanti notes the use of standard agreements.<sup>14</sup> This paper aims to fill the gap by comparing the transformation of *wadī'ah* and *bay' al-murābahah* contracts and analyzing DSN-MUI's legal *istinbāt* method.

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<sup>7</sup> Dian Fath Risalah, "OJK Sebut Dua Akad Paling Populer Di Bank Syariah," *REPUBLIKA.Co.Id*, 2024.

<sup>8</sup> Mohammad Muzwir R. Luntajo, "Implementasi Perhitungan Pricing Pembiayaan Murabahah Pada Bank Syariah," *Jihbiz Jurnal Ekonomi Keuangan Dan Perbankan Syariah* 5, no. 1 (2021): 1–26, <https://doi.org/10.33379/jihbiz.v5i1.864>.

<sup>9</sup> Candrakusuma, "Pendekatan Kritis."

<sup>10</sup> Sari and Zainuddin, "Pemberian Hadiah."

<sup>11</sup> Nur Huda, "Perubahan Akad Wadī'ah," *Economica: Jurnal Ekonomi Islam*, 6, no. 1 (2015), <https://doi.org/10.21580/economica.2015.6.1.789>.

<sup>12</sup> Mufti Afif, "Tabungan: Implementasi Akad Wadī'ah Atau Qard? (Kajian Praktik Wadī'ah Di Perbankan Indonesia)," *Jurnal Hukum Islam* 1, no. 1 (2016), <https://doi.org/10.28918/jhi.v1i1.556>; Sofyan Sulaiman, "Penyimpangan Akad Murābahah Pada Perbankan Syariah Di Indonesia," *Iqtishodia: Jurnal Ekonomi Syariah* 1, no. 2 (2016): 1–16.

<sup>13</sup> Bagya Agung Prabowo, "Konsep Akad Murabahah pada Perbankan Syariah (Analisa Kritis Terhadap Aplikasi Konsep Akad Murabahah di Indonesia dan Malaysia)," *Jurnal Hukum Ius Quia Iustum*, 16, no. 1 (2009), <https://doi.org/10.20885/iustum.vol16.iss1.art7>.

<sup>14</sup> trisadini Prasastinah Usanti, "Akad Baku Pada Pembiayaan Murabahah Di Bank Syariah," *Perspektif* 18, no. 1 (2013), <https://doi.org/10.30742/perspektif.v18i1.113>.

Candrakusuma and Ghozali found in their work that the *wadi'ah yad al-damanah contract* as the basis of the savings contract seems forced and tends to be more beneficial to the bank where the bank gets funds from the customer that can be invested in financing without having to provide profit sharing to the customer. In addition, in practice, this contract then transforms into a debt and receivables contract (*qard*), not *wadi'ah* anymore.<sup>15</sup> Sari and Zainuddin found that the practice of giving bonuses to *wadi'ah savings customers* at BPRS Gajahtongga Kotopiliang is not in accordance with the DSN-MUI fatwa No. 86/2012 regarding prizes in raising funds at LKS, because in this BPRS the bonus is promised at the beginning of the contract so the law is not allowed.<sup>16</sup> Nur Huda like Candrakusuma and Ghozali found that *the wadi'ah contract* implemented in savings products has changed to a debt and receivables contract.<sup>17</sup> However, it is also similar to *mudarabah*, when viewed from the investment in the funds entrusted by the customer. According to him, the transformation into *mudarabah* is also inappropriate, the contract should be immediately *mudarabah* so that it is clearer. On the other hand, Afif stated that according to the Hanafi School, the profits obtained from producing entrusted goods must be given alms, not taken by the recipient of the deposit (bank) or the custodian himself. In addition, the transformation of *wadi'ah* which is basically *yad al-amanah* into *wadi'ah yad al-damanah* is actually contrary to the basic character of *wadi'ah* itself, namely *amanah*, because *yad al-damanah* (responsibility for risk) actually presupposes not *trust*.<sup>18</sup> These works, although they have revealed the transformation of *the wadi'ah contract* into *qard*, do not compare with the transformation that occurred in the *bay' al-murabahah contract* which basically also became the substance of *qard* as well.

As for *murabahah*, Sulaiman found that in practice *murabahah* financing is more similar to credit in conventional banks, namely both have set profits at the beginning, which distinguishes only the contract, the first is a sale and purchase contract while the last contract is a debt and receivables.<sup>19</sup> In addition, the practice of *murabahah* is also considered deviant, namely in terms of the necessity of perfect ownership of the object on the seller along with the price of obtaining goods that must be informed, the use of the *murabahah* contract is inappropriate, and there is an element of *maysir* in the *price mark-up*. On the other hand, Prabowo (Prabowo, 2009) found differences in the implementation of *murabahah* financing in Indonesia and Malaysia. *Murabahah* financing in Malaysia is

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<sup>15</sup> Candrakusuma, "Pendekatan Kritis Implementasi Akad Wadi'ah Pada Perbankan Syariah Indonesia."

<sup>16</sup> Sari and Zainuddin, "Pemberian Hadiah Pada PT BPRS Gajahtongga Kotopiliang Kota Sawahlunto."

<sup>17</sup> Huda, "Perubahan Akad Wadi'ah."

<sup>18</sup> Afif, "Tabungan: Implementasi Akad Wadi'ah atau Qard? (Kajian Praktik Wadi'ah Di Perbankan Indonesia)."

<sup>19</sup> Sulaiman, "Penyimpangan Akad Murabahah Pada Perbankan Syariah Di Indonesia."

based on the *bay' al-'inah* contract (sell with a promise to buy back by the seller). In the literature of fiqh this contract is quite controversial, scholars tend to prohibit it, because it is only to 'outsmart' the prohibition of usury.<sup>20</sup> Meanwhile, Usanti found that many Islamic banks apply standard agreements in *murabahah* financing products.<sup>21</sup> These works, although they have affirmed the transformation of *bay' al-murabahah* into a *qard contract*, there is no attempt to compare it with the *wadi'ah* contract which is clearly transformed into *qard*. Similarly, their study also did not show that there was a difference in assessment in the MUI fatwa between the two transformations of the contract, where the first was recognized and the last was not recognized.

## METHOD

This type of research is descriptive qualitative research. The approaches used in this study are juridical-normative and juridical-sociological. The first approach is used to understand and find the contract construct in the transformation of *wadi'ah* and *bay' al-murabahah* contained in the legal documents of DSN, BI, and OJK products. Meanwhile, the latter approach is used to find the contract construct on the transformation of *wadi'ah* and *bay' al-murabahah* which is empirically applied in LKS, which in this case is represented by BSI Purwokerto (BUS category), BPRS BAS (BPRS category), and BMT Dana Mentari (LKMS category). The normative and empirical findings will then be analyzed in the framework of jurisprudence (Islamic law of alliance). What is meant by contract construction here is a series of procedures carried out in implementing a contract.

Data in the normative category were collected by documentation techniques, while empirical data were collected by observation, interview, and documentation techniques. The first source of data comes from books, research results, or articles related to *the wadi'ah* and *bay' al-murabahah* contracts in fiqh; DSN fatwas on *wadi'ah* and *bay' al-murabahah*; Regulations of Bank Indonesia and OJK on *wadi'ah* and *bay' al-murabahah*. The last data source is LKS which represents the three clusters as mentioned above (BUS, BPRS, and LKMS).

The data analysis technique in the research follows the opinion of Gijssels and Van Hoeke cited by Sugeng Istanto (2007), where there are three stages in analyzing data, namely: (a) collecting and compiling search data in one system (systematized); (b) explain

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<sup>20</sup> Prabowo, "Konsep Akad Murabahah Pada Perbankan Syariah (Analisa Kritis Terhadap Aplikasi Konsep Akad Murabahah Di Indonesia Dan Malaysia)."

<sup>21</sup> Usanti, "Akad Baku pada Pembiayaan Murabahah di Bank Syariah."

and evaluate the data; and (c) draw conclusions based on previous explanations and evaluations.

## RESULT AND DISCUSSION

### 1. Transformations of *Mu'āmalah* Contracts

The study of contracts in Islamic law falls under *mu'āmalah*, which is rational, permissible, and open to change. Unlike worship laws which are unintelligible, forbidden, and resistant to change.<sup>22</sup> These Three characteristics-intelligibility (*ma'qūlah al-ma'nā*), the principle of ability (*al-barā'ah al-aşliyyah*), and openness to innovation-underpin the rules of *mu'āmalah*. *Mu'āmalah* laws are rational and reasoned, with commands and prohibitions based on logic and benefits or harms.<sup>23</sup> For example, the Prophet's prohibition on selling goods not owned aims to prevent disputes. If a *mu'āmalah* prohibition seems irrational, it might stem from misunderstanding or misapplication.<sup>24</sup>

The first paradigm is intelligibility, as seen in the prohibition of usury (*ribā*). Usury is not merely any addition but must be understood as exploitative and oppressive, like *ribā nasī'ah* from the pre-Islamic period, characterized by multiplied debt (*ad'āfan muḍā'afah*). As mentioned in Q.S. Ali 'Imran (3): 130, *ad'āfan muḍā'afah* is characterized by fines for late payment of debts, calculated in a series, leading to severe economic exploitation and further impoverishing debtors.<sup>25</sup> This form of usury targets exploitative and oppressive debt practices.

The second legal paradigm in *mu'āmalah* is the principle of permissibility (*al-barā'ah al-aşliyyah*), expressed in the rule *al-aşlu fi al-mu'āmalāt wa al-'uqūd al-ibāḥah ḥattā yadulla al-dalīlu 'ala al-ḥazar*, which means transactions and contracts are allowed unless explicitly prohibited by Islamic law.<sup>26</sup> This principle implies that actions are free unless they conflict with Islamic teachings. For example, the main contracts in Islamic banking, such as *murabahah*, *musharakah*, and *mudarabah*, are basically contracts that do not have Islamic texts as a basis. These contracts are permissible in Islam primarily because of this

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<sup>22</sup> Jamal Abdul Aziz, *Dikotomi Ibadat Dan Adat Dalam Hukum Islam*, ed. Abdul Wachid (Yogyakarta: Grafindo Litera Media, 2009).

<sup>23</sup> Abū Ishāq al-Shāṭibī, *al-Muwāfaqāt fi Uşul al-Sharī'ah*, ed. 'Abd Allāh Darrāz (Riyāḍ: Wizārah al-Shu'ūn al-Islāmiyyah wa al-Awqāf wa al-Da'wah wa al-Irsyād, n.d.), II: 228.

<sup>24</sup> Muḥammad 'Uthman Shabīr, *Al-Madkhal ilā Fiqh al-Mu'āmalāt al-Māliyyah: al-Māl-al-Milkiyyah-al-'Aqd* (Yordan: Dār al-Nafā'is, 2010), 38.

<sup>25</sup> Abu Ja'far al-Tabari, *Jami' al-Bayān fi Ta'wil Al-Qur'an*, ed. Ahmad Muhammad Shākir (n.p.: Mu'assah al-Risālah, 2000), VII: 205.

<sup>26</sup> Al-Ri'āsah al-'Āmmah li Idārah al-Buḥūs wa al-Iftā', *Majallah al-Buḥūs Al-Islāmiyyah* (n.p.: Idārah al-Buḥūs, 1999), LVI: 464.

principle of permissibility. So as long as there is no Islamic text that prohibits it, the law is permissible.<sup>27</sup>

Based on the second paradigm, the third paradigm in *mu'āmalah* embraces change and innovation, building on the previous paradigms. Change and innovation require rational understanding, which is essential for development.<sup>28</sup> This rationality allows *mu'āmalah* contracts to evolve, as seen in sharia financial institutions. The principle of permissibility (*al-barā'ah al-aşliyyah*) underlies this capability for change. This third paradigm also accommodates new rules, such as considering customary practices in *mu'āmalah*.<sup>29</sup>

Apart from the three paradigms, *mu'āmalah* law is also characterized by legal deception (*hīlah al-ḥukm*). *Hīlah*, whose plural is *hiyal*, linguistically means to reverse the mind to achieve goals.<sup>30</sup> *Hīlah* means manipulating valid laws to achieve goals in both *taklīfī* and *wad'ī* law.<sup>31</sup> According to Ibn Taimiyyah, *hīlah* spreads due to sin, leading to pettiness, and excessive strictness in understanding Islamic prohibitions, forcing people to seek permission through *hīlah*.<sup>32</sup>

In general, scholars agree that tactics (*hīlah*) against the objectives of Shariah (*maqāsid al-Shāri'*) are *ḥarām* (forbidden).<sup>33</sup> The Ḥanafis and Shāfi'iyyah believe that invalid *hīlah* does not stop the application of worldly laws outwardly (*zāhir*), but it is still *ḥarām* and sinful if it aims to change Sharia law. The Malikiyyah, Hanabilah, and Zaydiyyah believe that invalid *hīlah* nullifies worldly laws. An example of *ḥarām hīlah* is lending 10 dirhams with the intent to be repaid 20 dirhams, then disguising it as a cloth sale and resale to achieve this.<sup>34</sup>

In the world of Islamic banking, there are actually a lot of legal tricks. The use of non-qard contracts in funding and financing products shows this. The logic is simple, if the basis of the contract on Islamic bank products is qard, then the bank will not be able to make a profit, because any profit from the debt and receivables contract will be

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<sup>27</sup> Rafiq Yunus Al-Misri, *Al-Jami' Fi Usul Al-Riba* (Damaskus-Beirut: Dar al-Qalam – al-Dar al-Syamiyyah, 1991), 355; Abdullah Saeed, *Islamic Banking and Interest: A Study of the Prohibition of Riba and Its Contemporary Interpretation* (Leiden-New York-Koln: E.J. Brill, 1996), 51-52.

<sup>28</sup> Muhammad Khalid Masud, *Filsafat Hukum Islam*, ed. Ahsin Muhammad, terjemah (Bandung: Penerbit Pustaka, 1996), 297.

<sup>29</sup> Shabīr, *Al-Madkhal ilā Fiqh al-Mu'āmalāt al-Māliyyah: al-Māl-al-Milkiyyah-al-'Aqd*, 39-40.

<sup>30</sup> Muḥammad 'Abd al-Wahhāb Buḥayrī, *al-Ḥiyal fī al-Sharī'ah al-Islāmiyyah* (Jeddah: Maṭba'ah al-Sa'ādah, 1974), 16; Abū Ḥātim Maḥmūd ibn al-Ḥasan al-Qazwīnī, *Al-Ḥiyal fī al-Fiqh*, ed. 'Umar Ḥasan Muḥammad Muḥy al-Dīn al-Jabbārī (Beirut: Dār al-Kutub al-'Ilmiyyah, 2012), 67-68.

<sup>31</sup> Bujayri, *Al-Ḥiyal Fi Al-Syari'ah Al-Islamiyyah*; al-Qazwini, *Al-Ḥiyal Fi Al-Fiqh*.

<sup>32</sup> Ibn Taymiyyah, *Al-Fatāwā Al-Kubrā*, ed. Ḥasanayn Muḥammad Makhlūf (Beirut: Dār al-Ma'rifah, n.d.), IV: 28.

<sup>33</sup> Al-Qazwīnī, *Al-Ḥiyal fī Al-Fiqh*, 128.

<sup>34</sup> Buḥayrī, *Al-Ḥiyal fī al-Syari'ah al-Islāmiyyah*, 31-32.

considered as *riba*. Therefore, non-*qard* contracts are used so that the profits from these contracts do not fall on usury.<sup>35</sup>

## **2. The Transformation of *Mu'āmalah* Contracts from Islamic Jurisprudence to Bank Products: between the Formalities of Contract and Its Substance**

The transformation of *mu'āmalah* contracts involves adapting normative jurisprudence-based contracts to fit the regulations and character of modern financial institutions, particularly banks. This change is necessary and affects all *mu'āmalah* contracts in Islamic banking. The causes of this transformation include:<sup>36</sup>

- a. The dynamic nature of *mu'āmalah* law requires continuous contract transformation and modification to remain relevant to evolving human life, as emphasized by Ibn Rushd;<sup>37</sup>
- b. Changes in legal subjects, with banks and non-bank institutions becoming dominant in Islamic Financial Institutions, have led to broad, systemic consequences and frequent legal debates;
- c. Islamic banking's need for innovation to compete with conventional banks has resulted in the development of new products based on *mu'āmalah fihiyyah* contracts, requiring modifications to meet competitive standards.

Contracts in Islamic Financial Institutions vary in the level of modification.<sup>38</sup> Light modifications are mostly formal and superficial, while heavy modifications lead to substantive changes, altering the contract's essence despite its unchanged formal appearance on paper. Mild modifications in *muḍārabah* contracts occur in deposit and financing products.<sup>39</sup> When a customer deposits funds in a Sharia bank, they are the *ṣāhib al-māl* (fund provider) and the bank is the *muḍārib* (fund manager), with customers receiving fluctuating profit sharing instead of interest. The contract's formality and

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<sup>35</sup> Abubakar Muhammad Smolo, Edib; Musa, "The (Mis)Use of Al-Hilah (Legal Trick) and Al-Makhraj (Legal Exit) in Islamic Finance," *Journal of Islamic Accounting and Business Research* 11, no. 9 (2020): 2169 – 218, <https://doi.org/https://doi.org/10.1108/JIABR-01-2020-0009>; Mustafa Syed, Ehsanullah Agha; Omar, "Hiyal in Islamic Finance: A Recognition of Genuine Economic Need or Circumvention of Riba?," *Qualitative Research in Financial Markets* 9, no. 4 (2017): 382 – 390; Muhammad Masum Billah, "The Prohibition of Ribā and the Use of Ḥiyāl by Islamic Banks to Overcome the Prohibition," *Arab Law Quarterly* 28, no. 4 (2014): 392 – 408; Billah M.M., "Extensive Use of Hilah in Islamic Banking and Finance," *Islamic Quarterly* 59, no. 1 (2015): 65–87.

<sup>36</sup> Aziz, "Transformasi Akad Muamalah Klasik Dalam Produk Perbankan Syariah."

<sup>37</sup> Ibn Rushd, *Bidāyah Al-Mujtahid Wa Nihāyah Al-Muḥtaṣid*, ed. Majīd Al-Ḥamwī (Beirut: Dār Ibn Ḥazm, 1995), I: 16.

<sup>38</sup> Aziz, "Transformasi Akad Muamalah Klasik Dalam Produk Perbankan Syariah."

<sup>39</sup> Della Safira Radi Putri and Noven Suprayogi, 'Sensitivitas Deposito Muḍārabah, Elastisitas Tingkat Suku Bunga, Elastisitas Tingkat Bagi Hasil Pada Perbankan Syariah Di Indonesia', *Jurnal Ekonomi Syariah Teori Dan Terapan* 7, no. 9 (2020): 1629, <https://doi.org/10.20473/vol7iss20209pp1629-1645>.



substance feel the same to customers. Similarly, *qard* contracts in financing products remain substantively unchanged for customers, with financial institutions (banks), not individuals, acting as the *muqrid*, and administrative costs included in all bank products.

Heavy modifications occur in most contracts applied in Islamic banks. For example, *wadī'ah* contracts in savings products transform into *qard*, with bonuses from the bank given as gifts to avoid resembling interest.<sup>40</sup> Although formally *wadī'ah*, these deposits substantively become debt contracts. Similarly, *murābahah* contracts, while formal sales, feel like customer credit contracts. Customers perceive they receive funds from the bank to pay in instalments. The *murābahah* contract involves the customer buying goods on the bank's behalf and then reselling them, which is often not fully understood and feels like conventional bank loans.<sup>41</sup>

The construct is mostly a formality. The customer buys goods on the bank's behalf with the bank's funds, then hands them over to the bank, which resells them to the customer at a higher price. Customers often do not understand this process fully, who see it as similar to getting conventional bank loans to pay in instalments. From the perspective of Islamic law, contract transformation is permissible and has historical precedent. Given the dynamic nature of Islamic law, adapting contracts to the evolving social and economic landscape is necessary. However, heavily modified contracts, like combining *qard* (debt) with *ijārah* (rent) or adding elements to repay debt, may contradict Islamic teachings in substance.<sup>42</sup> Despite this, as long as the formalities of the contract align, any discrepancies are often only felt by the customer.

### **3. Transformation of Wadī'ah Contract from Islamic Jurisprudence to Bank Products**

The term "*wadī'ah*" originates from the Arabic "*wada'a al-shay'*," meaning to leave something. It refers to objects left in someone's care.<sup>43</sup> Etymologically, *wadī'ah* means entrusted goods, but terminologically it has two meanings: as a contract (*īdā'*) and as an entrusted item (*wadī'ah*). Although *īdā'* is more precise, *wadī'ah* is commonly used in jurisprudence to describe the act of handing over objects to others for safekeeping, whether explicitly or through gestures.<sup>44</sup>

Although there are no explicit verses or traditions from the Prophet about the *wadī'ah* contract, books of jurisprudence cite religious foundations for it, including verses, hadiths, and *ijmā'*. Relevant verses emphasize fulfilling trusts and returning them to their

<sup>40</sup> OJK, 'Lampiran IV SE OJK No. 36/SEOJK.03/2015', Pub. L. No. 36 (2015), 1-3.

<sup>41</sup> *Ibid.*, 59.

<sup>42</sup> Abū Bakr Aḥmad ibn al-Ḥusayn ibn 'Alī Al-Bayhaqī, *Al-Sunan al-Kubrā*, ed. Muḥammad 'Abd al-Qadīr 'Aṭā (Beirut: Dār al-Kutub al-'Ilmiyyah, 2002), V: 573.

<sup>43</sup> Al-Sayyid Sābiq, *Fiqh al-Sunnah* (Cairo: al-Shirkah al-Dawliyyah li al-Ṭibā'ah, 2004), 974.

<sup>44</sup> Wahbah Al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuh*, cet. 2 (Damaskus: Dār a-Fikr, 1985), V: 37.

rightful owners (al-Nisā' 4:58 and al-Baqarah 2:283) and helping one another in good (al-Mā'idah 5:2). Hadiths supporting this contract include those commanding the fulfillment of trust and prohibiting betrayal, even against those who have betrayed.<sup>45</sup> One hadith describes the Prophet instructing Ali to stay in Mecca to return entrusted goods before migrating to Medina. *Ijmā'* supports the wadī'ah contract, recognizing its necessity for the community.<sup>46</sup> Other hadiths encourage mutual help among Muslims.<sup>47</sup> *Ijmā'* supports the wadī'ah contract, recognizing its necessity for the community.<sup>48</sup>

The *wadī'ah* contract requires the presence of four elements: *muwaddi'* (the party entrusting the goods), *muwadda'/mustawda'/wadī'* (the party receiving the goods), *wadī'ah* (the entrusted goods), and *ṣighah wadī'ah* (the contract form). Each element must be met for the contract to be valid and legally binding. The *muwaddi'* and *muwadda'* must be legally competent individuals, the entrusted goods must be valuable and transferable, and the contract terms must be clear to both parties.<sup>49</sup> Most Islamic jurists view *wadī'ah* as a trust contract, where the *muwadda'* (recipient) is not responsible for damage to the goods unless due to negligence, based on a hadith stating no responsibility for damage to entrusted goods.<sup>50</sup> Besides *wadī'ah*, trust contracts include *shirkah*, *wakālah*, *ijārah*, and *wiṣāyah*.<sup>51</sup> However, Ahmad ibn Hanbal argues that *wadī'ah* is a guarantee contract, making the *muwadda'* responsible for any damage. Modern *mu'āmalah fiqhiyyah* literature recognizes both views, with variants: *wadī'ah yad al-amānah* (recipient cannot use the goods) and *wadī'ah yad al-ḍamānah* (recipient can use the goods). The former is used in banking for SDB (Safe Deposit Boxes), and the latter for savings and current accounts.<sup>52</sup>

Islamic jurists agree that the wadī'ah contract is a *tabarru'* (virtue) contract based on help, not business, despite differing on whether it is *amānah* or *ḍamānah*. Thus, the *muwadda'* (recipient) is not entitled to remuneration for guarding the goods. However, Ḥanafīs and Shāfi'īs allow the *muwadda'* to request a reward from the *muwaddi'*. Mālikīs

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<sup>45</sup> Abū Dāwud, *Sunan Abī Dāwud*, ed. Muḥammad Muḥy al-Dīn 'Abd Al-Ḥamīd (Beirut: Dār a-Fikr, n.d.), II: 312; Abū 'Isā Al-Turmuẓī, *Sunan Al-Turmuẓi*, ed. Aḥmad Muḥammad Ṣhākīr wa Ākharūn (Beirut: Dār Iḥyā' al-Turās, n.d.).

<sup>46</sup> Al-Bayhaqī, *al-Sunan al-Kubrā*, II: 252.

<sup>47</sup> Abū 'Abd Allāh al-Bukhārī, *Al-Jāmi' al-Ṣaḥīḥ al-Mukhtasar*, ed. Muḥammad Dīb Al-Bighā (Beirut: Dār Ibn Kaṣīr, 1987), II: 862.

<sup>48</sup> Al-Zuḥaylī, *Al-Fiqh al-Islāmī wa Adillatuh*, V:38.

<sup>49</sup> *Ibid.*

<sup>50</sup> Al-Bayhaqī, *al-Sunan al-Kubrā*, II: 257.

<sup>51</sup> Al-Bayhaqī, *al-Sunan al-Kubrā*, II: 257.

<sup>52</sup> Muhammad Syafī'i Antonio, *Bank Syariah: Dari Teori Ke Praktik*, cet. 1 (Jakarta: Gema Insani Press, 2001), 85 and so on.

and Hanbalis forbid rewards for simple deposition but permit them for maintenance or care, changing the contract to *ijārah* in such cases.<sup>53</sup>

According to Appendix IV of the Financial Services Authority (OJK) Circular Letter No. 36/SEOJK.03/2015 on Sharia Commercial Banks and Sharia Business Units, *wadī'ah* contracts are used in products like current accounts, savings, placements at Bank Indonesia, other banks, and Traveller's Cheques (TC). The most common products for customers are savings and current accounts, differing mainly in withdrawal methods. Current accounts use cheques, while savings do not. The customer (*muwaddi'*) deposits funds (*wadī'ah*) with the bank (*muwadda'*), and the contract (*ṣīghah wadī'ah*) is documented at account opening. Banks can manage these funds, but cannot promise rewards. They may provide promotional prizes in goods or services, not money, which must be halal and not lead to *ribā*, and must be given before the *wadī'ah* contract is made.

SE OJK No. 36/SEOJK.03/2015 explicitly allows promotional gifts to customers under strict conditions but prohibits promising bonuses or rewards. While it doesn't explicitly state if unpromised bonuses or rewards for savings or current accounts are allowed, the document suggests customers may benefit from rewards or bonuses, not just promotional gifts. This practice is common among Islamic and other non-bank banks. Although some banks choose the policy of not giving bonuses at all with consideration because it is safer in sharia, there is also a trend among customers who choose wadi'ah deposit products in general who want nothing additional to the funds they save.<sup>54</sup> According to him, BSI chose not to provide bonuses on wadi'ah savings products since the end of 2022 and early 2023. In contrast to BPRS BAS Purwokerto, a local Islamic bank in Banyumas, which still maintains giving bonuses to its customers in the form of money added to the customer's balance every month.<sup>55</sup> According to him, there are several types of wadi'ah savings products and there are also those that do not give bonuses to their customers, namely Amanah Savings.

By deciding to stop giving bonuses, Islamic banks signal a shift in the contract's nature from deposits to *qard*. This shift implies that any addition, including bonuses, is seen as interest. Thus, avoiding bonuses entirely is considered the safest way to align the product with Islamic principles. In Islamic banks, *wadī'ah* contracts, especially for savings and current accounts, are a variant of *wadī'ah yad al-ḍamānah*, allowing the bank to use customer funds. The bank may provide bonuses or rewards to customers as a thank you, but these must not be agreed upon at the start of the contract to avoid being considered

<sup>53</sup> Al-Kuwayt, *Al-Mawsū'ah Al-Fiqhiyyah Al-Kuwaytiyyah*, XMIII: 3.

<sup>54</sup> Interview with Tito, a member of BSI Sharia Supervisory Board (DPS), February 21, 2023.

<sup>55</sup> Interview with Erna Damayanti, Director of BPRS BAS Purwokerto, February 16, 2023.

interest. Regular, pre-agreed bonuses, especially in money, would make *wadī'ah* savings similar to conventional interest-bearing accounts.

The transformation of the *wadī'ah* contract in savings and current account products has resulted in several changes: 1) Unusual Reward Provider: The bank, as the *muwadda'*, provides bonuses to customers, which contradicts traditional jurisprudential logic where rewards should come from the *muwaddi'*. This anomaly arises due to the nature of banks as financial intermediaries, managing entrusted funds by investing them for profit, a concept not envisioned in classical jurisprudence; 2) Usury Risk: Traditional *wadī'ah* agreements are not associated with usury, which is typically linked to receivables and buying/selling contracts; 3) Shift to Debt Contract: This transformation shifts the substance of the contract to debt (*qard*), where the depositor (customer) becomes the creditor (*muqrid*) and the bank becomes the debtor (*muqtarid*). This shift is justified by the prohibition of promised bonuses, aligning with the hadith of the Prophet regarding debt repayment. Some authors base the inability to promise the bonus on the hadith of the Prophet, which relates to the repayment of a debt he owed to an Arab Bedouin.<sup>56</sup> The transformation of *wadī'ah* contracts in Islamic banks involves significant modifications, notably the shift to a debt (*qard*) arrangement and the risk of *ribā*, despite maintaining the formal classification as *wadī'ah*. The change of the muamalah contract is not prohibited, as long as the change is not followed by prohibited things. For example, the change to a *qard* contract is not followed by an addition in its repayment that is required at the beginning of the contract. This is based on the principle of ability in muamalah above.

#### **4. The Transformation of the *Bay' al-Murābahah* Contract from Islamic Jurisprudence to Bank Products**

Buying and selling are classified in various ways by Islamic jurists. Wahbah al-Zuhaylī categorizes buying and into four: (i) *bay' al-muqāyadah* (barter, the objects are both goods); (ii) *al-bay' al-muṭlaq* (ordinary buying and selling, goods with debts/money); (iii) *al-ṣarf* (debt with debt or money with money); and (iv) *bay' al-salam* (buying and selling debt with goods). As for the price, buying and selling is divided into four as well, namely: (i) *bay' al-murābahah*; (ii) *bay' al-tawliyah*; (iii) *bay' al-waḍī'ah*; and (iv) *bay' al-musāwamah*.<sup>57</sup> Sa'd Khalifa al-'Abbar based on its pricing, buying and selling is divided into two, namely: (i) *bay' al-musawamah* and (ii) *bay' al-amānah*. Furthermore, *bay' al-*

<sup>56</sup> Abū Dāwud, *Sunan Abī Dāwud*, II: 318.

<sup>57</sup> Al-Zuhaylī, *Al-Fiqh Al-Islāmī Wa Adillatuh*, IV: 595-596.

*amānah* is also divided into three, namely: (i) *bay' murābahah*; (ii) *bay' al-tawliyah*; and *bay' al-wadī'ah*.<sup>58</sup>

*Murābahah* entails four key elements: (a) the seller owns the object of sale; (b) the price is specified (from prior trades); (c) there are agreed-upon additional profits; and (d) both parties agree to the additional benefits. Failure to meet any of these elements nullifies the *murābahah* contract.<sup>59</sup> *Murābahah* is verbally established when a seller discloses the purchase price of an item and adds a profit, to which the buyer agrees. This transaction is termed *bay' al-amānah* (trust-based buying and selling) because the seller's stated price can be trusted. Unlike *bay' al-musāwamah*, which is a general form of trade, *murābahah* is inherently profit-oriented. The practice of *murābahah* aligns with this objective, whereas *tawliyah* and *wadī'ah* transactions are limited to specific circumstances, such as goods being damaged.<sup>60</sup>

The Islamic foundations of *murābahah* sales include the Qur'an, Sunnah, and the opinions of Islamic jurists. Quranic verses supporting *murābahah* include those encouraging seeking Allah's bounty and permitting trade while prohibiting *ribā*. The Quranic verses supporting *murābahah* include those encouraging seeking Allah's bounty (Q.S. al-Jumu'ah (62): 10) and justifying buying and selling while prohibiting *ribā* (Q.S. al-Baqarah (2): 198, 275). Prophetic traditions allow bartering goods of different quantities as long as the transaction is immediate. Additionally, a hadith from Ibn Mas'ud indicates that the Prophet permitted trading 10 for 11 or 12 at a fixed price. Islamic jurists generally permit *murābahah*, with some even considering it a consensus (*ijmā'*), though some view it as *makrūh* (disliked).<sup>61</sup> These hadiths indicate that selling goods at a price higher than the purchase price is permissible.<sup>62</sup> Another hadith, according to Ibn Mas'ud, states that the Prophet did not prohibit trading *dah yāzdah* and *dah dawāzdah* (selling 10 for 11 or 12) because it was conducted at a fixed price. Islamic jurists generally permit *murābahah*, with some even considering it a consensus (*ijmā'*), though some view it as *makrūh* (disliked).<sup>63</sup>

In implementing *murābahah* contracts, Islamic banks provide funds to customers to purchase goods at cost plus an agreed-upon margin, as regulated by SE OJK No. 36/SEOJK.03/2015. Customers are required to settle their debts accordingly. Goods must

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<sup>58</sup> Sa'd Khalifah al-'Abbār, *al-Murābahah Al-Maṣrafiyyah Wa Salāhiyatuhā Kabadil Shar'i li Al-Fā'idah Al-Ribāwiyyah* (Benghazi: Dār al-Kutub al-Waṭaniyyah, 2018), 17.

<sup>59</sup> 'Abd al-Ḥamīd Maḥmūd al-Ba'li, *Fiqh al-Murābahah fi al-Taṭbīq al-Iqtisādī al-Mu'āṣir* (Kairo: Maktabah al-Salām al-'Alamiyyah, n.d.), 26.

<sup>60</sup> Al-'Abbār, *Al-Murābahah al-Maṣrafiyyah aa Ṣalāhiyatuhā Kabadil Shar'i li al-Fā'idah al-Ribāwiyyah*, 18.

<sup>61</sup> Abū Dāwūd, *Sunan Abī Dāwūd*, V: 44.

<sup>62</sup> Al-Ba'li, *Fiqh Al-Murābahah fi al-Taṭbīq al-Iqtisādī al-Mu'āṣir*, 29-30.

<sup>63</sup> *Ibid*, 30.

be specified in terms of quantity, quality, price, and availability at the time of the contract. The bank notifies the customer of the acquisition price, and the financing period is agreed upon. Banks can finance various purposes like working capital, investments, or consumption. The assets can include property, vehicles, or other items, with the bank financing part or all of the purchase price. The bank may also purchase goods on behalf of the customer from third parties, with the goods becoming the bank's property before the *murābahah* contract is executed.<sup>64</sup>

While banks can represent customers in purchasing goods per the above provisions, they often allow customers to make the purchase themselves, merely providing the funds. This practice transforms the *murābahah* contract into *bay' al-murābahah bi al-wakālah* (*murābahah* with representation). However, Islamic banks are moving away from this model. For instance, BSI and BPRS BAS Purwokerto offer two *murābahah* financing models: with and without *wakālah* contracts. The latter involves banks directly buying the goods for customers, increasing cooperation with shops. This shift aims to avoid transforming buying and selling into mere accounts receivable. Although the member of DPS who were formally interviewed still rejected the shift in substance. The desire of the two banks to further encourage *murabahah* financing without *wakalah* is actually enough to provide an explanation.

Collateral is crucial in *murābahah* financing within Islamic banks, like conventional banking practices, reinforcing the transformation of *murābahah* contracts into debt contracts. Although some Sharia Supervisory Board members argue against its necessity, concerns persist. Fulfilling the provision that *murābahah* can only be implemented after assets become the bank's property poses challenges, especially for immovable assets. In practice, banks often hold third-party certificates or accept customers' asset certificates as collateral. For motor vehicles, ownership documentation need not be transferred to the bank; collateral suffices.

In a *murābahah* contract, the customer purchases goods from the bank in instalments, with the bank providing funds. The customer then transfers the goods to the bank, making the bank the owner, before repurchasing them at an agreed-upon price, inclusive of a profit margin. Monthly payments from the customer cover the principal and profit margin, typically requiring collateral.

The *bay' al-murābahah bi al-wakālah* construct in Islamic banks simplifies transactions between customers and banks, resembling conventional credit contracts. Once approved for financing, customers sign contracts at the bank, receive funds the next day, and repay

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<sup>64</sup> OJK, Lampiran IV SE OJK No. 36/SEOJK.03/2015, 58-59.

in monthly instalments. However, the transformation of the *bay' al-murābahah* contract into accounts receivable is not legally recognized, evident from the continued justification of additional profits, which, if acknowledged as a shift, would be considered *ribā*. Several indicators support this shift, including formal legal writings and the logical consequences of the contract's implementation mechanism.

## 5. Analysis of Islamic Legal Perspectives

The transformation of *wadī'ah* and *murābahah* contracts in Islamic banks shifts their substance from deposits and sales to debt (*qard*). While *wadī'ah* contracts implicitly recognize this shift through the prohibition of promised bonuses to avoid *ribā*, *murābahah* contracts do not formally acknowledge it, allowing banks to collect margins. This inconsistency in assessing transformations creates ambiguity.

*Mu'āmalah* contracts in Islamic banks have primarily relied on formal legal documents, lacking substantive aspects felt by both parties. Efforts to Islamize banking aim to formalize non-debt *mu'āmalah* contracts, such as *wadī'ah* and *muḍārabah* for funding, and *murābahah*, *musharakah*, *muḍārabah*, and *ijārah* for financing. The objective is to make profits lawful by framing them as bonuses, profit sharing, margins, or fees, rather than interest. However, these non-debt contracts remain largely formal, leaving the substantive debt-based nature of banking unchanged. This superficial Islamization does not eliminate the underlying credit/debit system.

Islamic legal teachings in *mu'āmalah* are rational and focused on benefit (*ma'qūlah al-ma'nā*).<sup>65</sup> Al-Qaradawi stated that *ḥalāl* and *ḥarām* in *mu'āmalah* are based on rational reasons linked to human benefit. Lawful actions are good, while forbidden ones are harmful. In contracts, the focus is on substance over wording.<sup>66</sup> For instance, in a *muḍārabah* contract, if all profit goes to the *muḍārib*, it becomes a debt (*qard*) contract, making the *muḍārib* responsible for losses. If the profit goes to the *sahib al-mal*, it becomes an *ibḍā'* contract, absolving the *muḍārib* of responsibility for losses.<sup>67</sup> Thus, a *muḍārabah* contract can transform into a debt or *ibḍā'* contract based on profit distribution, with differing responsibilities.

The transformation of *wadī'ah* and *murābahah* contracts in Islamic banking reflects a shift from deposits and sales to debt (*qard*). *Wadī'ah*, initially a deposit agreement, effectively becomes a debt contract when the bank manages funds and earns profits.

<sup>65</sup> Shabīr, *al-Madkhal ilā Fiqh al-Mu'āmalāt al-Māliyyah: al-Māl-al-Milkiyyah-al-'Aqd*, 39.

<sup>66</sup> Yūsuf Al-Qaradāwī, *Al-Ḥalāl wa al-Ḥarām fī Al-Islām* (Kairo: Dār al-Kutub al-Miṣriyyah, 2012), 34.

<sup>67</sup> 'Alī Aḥmad Al-Nadawī, *Mawsū'ah Al-Qawā'id wa al-Ḍawābiṭ al-Fiqhiyyah al-Ḥakimah li al-Mu'āmalāt al-Māliyyah fī al-Fiqh al-Islāmī* (n.p.: n.p., 1999), I: 522.

While this transformation is substantively recognized, banks insisting on the formal contract despite this change contradict broader *fiqh* rules in *mu'āmalah*.

Similarly, the transformation of the *murābahah* contract, despite being a sale, resembles a debt contract due to the bank providing funds and the customer repaying with an additional margin. Unlike *wadī'ah*, this shift is not formally acknowledged, as profit margins continue to be recognized. This inconsistency with broader *fiqh* rules raises concerns. Using *mu'āmalah* contracts to Islamize banking products may inadvertently legalize interest, challenging the avoidance of credit transactions closely associated with interest. Despite efforts to formalize non-credit transactions, they may effectively resemble credit transactions, camouflaging against the interest prohibition. *Wadī'ah* and *murābahah* contracts, although formally categorized as deposit and buying/selling contracts, can effectively circumvent the interest prohibition through bonuses and profit margins, which resemble interest. Both transformations, therefore, should be equally condemned from an Islamic legal theory perspective for contradicting Islamic law.

Actually, this problem arises because of the doctrine of absolute prohibition of interest. On the other hand, banking institutions are still considered important to maintain. Then there was a compromise in the form of 'Islamization of the banking system'. However, the 'Islamization' has only reached the level of replacing the contract that underlies banking products. The problem then is that not all contracts, even most of the *muamalah* contracts are actually not suitable for application in financial institutions such as banking. Therefore, this kind of inconsistency problem will always arise as long as the banking system is used. The solution is only two options, to change the doctrine of absolute interest prohibition<sup>68</sup> with a more flexible doctrine or to build a financial institution based on the Islamic tradition, abandoning the banking system.

## CONCLUSION

The *wadī'ah* contract and the purchase and sale of *murabahah* in Islamic banks have undergone a transformation in the category of heavy modification, namely a shift in substance to different contracts, namely both are substantive *qard* contracts. In savings products based on *wadī'ah* contracts, because the object is money/funds, the customer, as *muwaddi'* seems to shift to become *muqrid* (creditor), while the bank as *muwadda'* then shifts its status as if it becomes *muqtarid*

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<sup>68</sup> Jamal Abdul Aziz and Tulus Suryanto, "Is An Islamic Economic System Possible Without the Prohibition of Interest (Riba): A Critical Appraisal of A Shari'ah Compliant Economic System as Envisioned by Sjafruddin Prawiranegara (1911-1989) in Indonesia," *Manchester Journal of Transnational Islamic Law & Practice* 20, no. 4 (2004): 36–52; Jamal Abdul Aziz et al., "Rethinking 'Interest' in Islamic Finance: A Critique of the Method of Fatwā MUI and Its Legitimacy in Indonesia," *Journal of Islamic Thought and Civilization* 15, no. 1 (2025).



(debtor). This shift in the substance of the contract is strengthened by provisions related to *wadi'ah*-based deposit products where bonuses or prizes that will be given to saver customers cannot be promised at the beginning. This kind of provision usually appears in the discourse on the prohibition of bank interest in Islam, where some scholars are of the view that bank interest is forbidden because it is an addition to the repayment of the debt agreed upon at the beginning. Because it has shifted substantively to a *qard* contract, the consequence is that the bonus that can be given to the customer has shifted to interest. This conclusion is also reinforced by the decision of BSI, the largest Islamic bank in Indonesia, to choose to eliminate bonuses on *wadi'ah* contract-based deposit products from the end of 2022.

The *murabahah* purchase and sale contract that is the basis for *murabahah* financing has substantively shifted to *qard*, especially because of the basic provision issued by the OJK that banks basically only provide funds so that the customer himself usually buys the goods he wants. Therefore, the *murabahah* contract then transformed into *bay' al-murabahah bi al-wakalah* where the customer had the status of a bank representative to buy the goods he wanted. In this construct, the bank as the fund provider seems to act as a creditor (*muqrid*), while the customer as the user of funds seems to act as a debtor (*muqtarid*), who will have to return the funds with an additional amount called the profit margin (*murabahah*). As a logical consequence, the profit margin also seems to shift to the substance of interest/usury. This substantive shift seems to also be felt by Islamic bank managers and even their DPS as shown by the results of the interviews. Although they formally do not recognize it on the basis of the DSN fatwa which clearly legitimizes the practice of *murabahah* that has been taking place. However, the current tendency of Islamic banks to encourage financing without *wakalah* to be expanded on the one hand and reduce *murabahah* financing involving *wakalah* on the other is a fact that strengthens the author's conclusion. This means that they actually realize that *murabahah* financing involving *wakalah* contracts is actually not ideal. In addition, there is a guarantee in the financing of *murabahah* which also strengthens the impression of it as a *qard* contract, because the *rahn* contract, which underlies the guarantee, in *fiqh* is only known in the context of debts and receivables. Although the DPS emphasized that the guarantee had nothing to do with the *murabahah* sale and purchase agreement, it was because it was a condition for the approval of the proposed financing, it was difficult to separate it.

The shift in the substance of the contract in the two contracts in the perspective of Islamic law is actually not in accordance with the legal paradigm in the realm of *muamalah* which emphasizes the nature of rationality (*ma'qulah al-ma'na*). The emphasis on formal contracts on paper and by leaving aside the substance of the stronger contract felt by the parties, has actually brought *muamalah* transactions in this Islamic bank to a situation that is logically confusing. In addition, it is also contrary to the rules of *fiqh* which states that in the realm of contract what is seen is the meaning of the substance, not just the formality

of the arrangement of words. If analyzed through the theory of legal tricks (*hilah al-hukm*), the use of *wadi'ah* contracts in savings products and *murabahah* purchase and sale contracts in financing products can be categorized as an effort to divert the interest ban through the engineering of contracts that formally appear to be legitimate, but the real essence of interest remains unchanged. Such tricks can be categorized as tricks that are contrary to the purpose of *shari'ah* (*maqasid al-Syari'*) so that scholars agree that it is not allowed.

## REFERENCES

- Afif, Mufti. "Tabungan: Implementasi Akad Wadi'ah Atau Qard? (Kajian Praktik Wadi'ah Di Perbankan Indonesia)." *Jurnal Hukum Islam* 1, no. 1 (2016). <https://doi.org/10.28918/jhi.v1i1.556>.
- Al-'Abbar, Sa'd Khalifah. *Al-Murabahah Al-Masrafiyyah Wa Salahiyatuha Kabadil Syar'i Li Al-Fa'idah Al-Ribawiyah*. Benghazi: Dar al-Kutub al-Wataniyyah, 2018.
- Al-Ba'li, 'Abd al-Hamid Mahmud. *Fiqh Al-Murabahah Fi Al-Tatbiq Al-Iqtisadi Al-Mu'asir*. Kairo: Maktabah al-Salam al-'Alamiyyah, n.d.
- Al-Bayhaqi, Abu Bakr Ahmad ibn al-Husyan ibn 'Ali. *Al-Sunan Al-Kubra*. Edited by Muhammad 'Abd al-Qadir 'Ata. Beirut: Dar al-Kutub al-'Ilmiyyah, 2002.
- Al-Bukhari, Abu 'Abd Allah. *Al-Jami' Al-Sahih Al-Mukhtasar*. Edited by Muhammad Dib Al-Bigha. Beirut: Dar Ibn Kasir, 1987.
- Al-Ifta', al-Ri'asah al-'Amah li Idarah al-Buhus wa. *Majallah Al-Buhus Al-Islamiyyah*. n.p.: Idarah al-Buhus, 1999.
- Al-Jaziri, 'Abd al-Rahman. *Kitab Al-Fiqh 'ala Al-Mazahib Al-Arba'ah*. Beirut: Dar al-Kutub al-'Ilmiyyah, 2003.
- Al-Kuwayt, Wizârah al-Awqâf wa al-Syu'ûn al-Islâmiyyah bi. *Al-Mawsu'ah Al-Fiqhiyyah Al-Kuwaytiyyah*. al-Kuwayt: Tîbâ'ah Zât al-Salâsil, 1983.
- Al-Misri, Rafiq Yunus. *Al-Jami' Fi Usul Al-Riba*. Damaskus-Beirut: Dar al-Qalam – al-Dar al-Syamiyyah, 1991.
- Al-Nadawi, 'Ali Ahmad. *Mawsu'ah Al-Qawa'id Wa Al-Dawabit Al-Fiqhiyyah Al-Hakimah Li Al-Mu'amalat Al-Maliyyah Fi Al-Fiqh Al-Islami*. n.p.: n.p., 1999.
- Al-Qaradawi, Yusuf. *Al-Halal Wa Al-Haram Fi Al-Islam*. Kairo: Dar al-Kutub al-Misriyyah, 2012.
- al-Qazwini, Abu Hatim Mahmud ibn al-Hasan. *Al-Hiyal Fi Al-Fiqh*. Edited by 'Umar Hasan Muhammad Muhy al-Din al-Jabbari. Beirut: Dar al-Kutub al-'Ilmiyyah, 2012.
- Al-Syatibi, Abu Ishaq. *Al-Muwafaqat Fi Usul Al-Syari'ah*. Edited by Abdullah Darraz.

- Riyad: Wizarah al-Syu`un al-Islamiyyah wa al-Awqaf wa al-Da'wah wa al-Irsyad, n.d.
- Al-Tabari, Abu Ja'far. *Jami' Al-Bayan Fi Ta`wil Al-Qur'an*. Edited by Ahmad Muhammad Syakir. n.p.: Mu`assah al-Risalah, 2000.
- Al-Turmuzi, Abu 'Isa. *Sunan Al-Turmuzi*. Edited by Ahmad Muhammad Syakir wa Akharun. Beirut: Dar Ihya` al-Turas, n.d.
- Al-Zarqa`, Mustafa Ahmad. *Al-Fiqh Al-Islami Fi Thawbih Al-Jadid: Al-Madkhal Al-Fiqhi Al-'Amm Jilid I*. Damaskus: Ali Ba` al-Adib, 1968.
- Al-Zuhayli, Wahbah. *Al-Fiqh Al-Islami Wa Adillatuh*. Cet. 2. Damaskus: Dar a-Fikr, 1985.
- Antonio, Muhammad Syafi'i. *Bank Syariah: Dari Teori Ke Praktik*. Cet. 1. Jakarta: Gema Insani Press, 2001.
- Aziz, Jamal Abdul. *Dikotomi Ibadat Dan Adat Dalam Hukum Islam*. Edited by Abdul Wachid. Cet. 1. Yogyakarta: Grafindo Litera Media, 2009.
- — —. "Transformasi Akad Muamalah Klasik Dalam Produk Perbankan Syariah." *Al-Tahrir: Jurnal Pemikiran Islam* 12, no. 1 (2012): 21. <https://doi.org/10.21154/al-tahrir.v12i1.45>.
- Aziz, Jamal Abdul, Siti Maghfiroh, Ayu Kholifah, Adam Voak, and Chamada Chaidar Althof. "Rethinking 'Interest' in Islamic Finance: A Critique of the Method of Fatwâ MUI and Its Legitimacy in Indonesia." *Journal of Islamic Thought and Civilization* 15, no. 1 (2025).
- Billah, Muhammad Masum. "The Prohibition of Ribā and the Use of Hiyāl by Islamic Banks to Overcome the Prohibition." *Arab Law Quarterly* 28, no. 4 (2014): 392 – 408.
- Bujayri, Muhammad 'Abd al-Wahhab. *Al-Hiyal Fi Al-Syari'ah Al-Islamiyyah*. Jeddah: Matba'ah al-Sa'adah, 1974.
- Candrakusuma, Muslih. "Pendekatan Kritis Implementasi Akad Wadi'ah Pada Perbankan Syariah Indonesia." *FALAH: Jurnal Ekonomi Syariah* 1, no. 2 (2016). <https://doi.org/10.22219/jes.v1i2.3679>.
- Dawud, Abu. *Sunan Abi Dawud*. Edited by Muhammad Muhy al-Din 'Abd Al-Hamid. Beirut: Dar a-Fikr, n.d.
- Huda, Nur. "Perubahan Akad Wadi'ah." *Economica: Jurnal Ekonomi Islam* 6, no. 1 (2015). <https://doi.org/10.21580/economica.2015.6.1.789>.
- Jamal Abdul Aziz and Tulus Suryanto. "Is An Islamic Economic System Possible Without the Prohibition of Interest (Riba): A Critical Appraisal of A Shari'ah Compliant Economic System as Envisioned by Sjafruddin Prawiranegara (1911-1989) in Indonesia." *Manchester Journal of Transnational Islamic Law & Practice* 20, no. 4 (2004): 36–52.
- Luntajo, Mohammad Muzwir R. "Implementasi Perhitungan Pricing Pembiayaan

- Murabahah Pada Bank Syariah." *Jihbiz Jurnal Ekonomi Keuangan Dan Perbankan Syariah* 5, no. 1 (2021): 1-26. <https://doi.org/10.33379/jihbiz.v5i1.864>.
- M.M., Billah. "Extensive Use of Hilah in Islamic Banking and Finance." *Islamic Quarterly* 59, no. 1 (2015): 65-87.
- Masud, Muhammad Khalid. *Filsafata Hukum Islam*. Edited by Ahsin Muhammad. Terjemah. Bandung: Penerbit Pustaka, 1996.
- OJK. Lampiran IV SE OJK No. 36/SEOJK.03/2015, Pub. L. No. 36 (2015).
- Prabowo, Bagya Agung. "Konsep Akad Murabahah Pada Perbankan Syariah (Analisa Kritis Terhadap Aplikasi Konsep Akad Murabahah Di Indonesia Dan Malaysia)." *Jurnal Hukum Ius Quia Iustum* 16, no. 1 (2009). <https://doi.org/10.20885/iustum.vol16.iss1.art7>.
- Putri, Della Safira Radi, and Noven Suprayogi. "Sensitivitas Deposito Mudarabah, Elastisitas Tingkat Suku Bunga, Elastisitas Tingkat Bagi Hasil Pada Perbankan Syariah Di Indonesia." *Jurnal Ekonomi Syariah Teori Dan Terapan* 7, no. 9 (2020): 1629. <https://doi.org/10.20473/vol7iss20209pp1629-1645>.
- Risalah, Dian Fath. "OJK Sebut Dua Akad Paling Populer Di Bank Syariah." *REPUBLIKA.Co.Id*, 2024.
- Rushd, Ibn. *Bidayah Al-Mujtahid Wa Nihayah Al-Muqtasid*. Edited by Majid Al-Hamwi. Beirut: Dar Ibn Hazm, 1995.
- Sabiq, Al-Sayyid. *Fiqh Al-Sunnah*. Cet. 1. Cairo: al-Shirkah al-Dawliyyah li al-Tiba'ah, 2004.
- Saeed, Abdullah. *Islamic Banking and Interest: A Study of the Prohibition of Riba and Its Contemporary Interpretation*. Leiden-New York-Koln: E.J. Brill, 1996.
- Sari, Yenni Puspita, and Zainuddin Zainuddin. "Pemberian Hadiah Pada PT BPRS Gajahtongga Kotopiliang Kota Sawahlunto." *Al-Bank: Journal of Islamic Banking and Finance* 1, no. 2 (2021). <https://doi.org/10.31958/ab.v1i2.3307>.
- Smolo, Edib; Musa, Abubakar Muhammad. "The (Mis)Use of Al-Hilah (Legal Trick) and Al-Makhraj (Legal Exit) in Islamic Finance." *Journal of Islamic Accounting and Business Research* 11, no. 9 (2020): 2169 - 218. <https://doi.org/https://doi.org/10.1108/JIABR-01-2020-0009>.
- Sukmana, Rudi. "BSI Siap Perbesar Tabungan Wadiah Manfaatkan Nasabah Haji." *Info Ekonomi*, n.d. [https://infoekonomi.id/2024/10/bsi-siap-perbesar-tabungan-wadiah-manfaatkan-nasabah-haji/?utm\\_source=chatgpt.com](https://infoekonomi.id/2024/10/bsi-siap-perbesar-tabungan-wadiah-manfaatkan-nasabah-haji/?utm_source=chatgpt.com).
- Sulaiman, Sofyan. "Penyimpangan Akad Murabahah Pada Perbankan Syariah Di Indonesia." *Iqtishodia: Jurnal Ekonomi Syariah* 1, no. 2 (2016): 1-16.
- Syabir, Muhammad Usman. *Al-Madkhal Ila Fiqh Al-Mu'amalat Al-Maliyyah: Al-Mal-Al-Milkiyyah-Al-'Aqd*. Al-Tib'ah. Yordan: Dar al-Nafa'is, 2010.

Syed, Ehsanullah Agha; Omar, Mustafa. "Hiyal in Islamic Finance: A Recognition of Genuine Economic Need or Circumvention of Riba?" *Qualitative Research in Financial Markets* 9, no. 4 (2017): 382 – 390.

Taymiyyah, Ibn. *Al-Fatawa Al-Kubra*. Edited by Hasanayn Muhammad Makhluḥ. Beirut: Dar al-Ma'rifah, n.d.

Usanti, Trisadini Prasastinah. "Akad Baku Pada Pembiayaan Murabahah Di Bank Syariah." *Perspektif* 18, no. 1 (2013).  
<https://doi.org/10.30742/perspektif.v18i1.113>.