

Murabaha and Musawamah

Sigit S.Wibowo

October 17th, 2008

Contents

- ① Introduction
- ② Murabaha – a Bai' al Amānah
- ③ Bai' Murabaha in Classical Literature
- ④ The Need for Murabaha
- ⑤ Specific Conditions of Murabaha
- ⑥ Possible Structures of Murabaha
- ⑦ Murabaha to Purchase Orderer (MPO)
- ⑧ Issues in Murabaha

Introduction

- Banks' clients normally need a credit facility and the banks are selling goods on credit and thus creating receivables
- Credit sale (Bai' Mu'ajjal) may take a number of forms, important among which are
 - Musawamah, or normal sale, in which parties bargain on price, a sale is executed and goods delivered while payment is deferred
 - Murabaha, a "cost-plus sale", in which parties bargain on the margin of profit over the known cost price
- The technique of Murabaha that is currently being used in Islamic banking is something different from the classical Murabaha used in normal trade
 - Murabaha to Purchase Orderer (MPO): This transaction is concluded with a prior promise to buy or a request made by a person interested in acquiring goods on credit from any financial institution

Murabaha – a Bai' al Amānah

- Forms of Bai' can be described from the point of view of the cost of any item to the seller or the original cost
- Therefore, it is appropriate to refer briefly to all such lawful forms of Bai' which become effective with express mention of the original cost
 - Tawliyah: resale at the stated original price with no profit or loss to the seller
 - Wadhi'ah or Mohatah: resale at a discount from the original cost
 - Murabaha: sale with a fixed profit margin over the cost

Bai' Murabaha in Classical Literature

- Murabaha is derived from Ribh, which means gain, profit or addition
- A seller has to reveal his cost and the contract takes place at an agreed margin of profit
- Al-Marghinani
 - “the sale of anything for the price at which it was purchased by the seller and an addition of a fixed sum by way of profit”
- Al-Marghinani
 - “the sale at capital cost plus a known profit; the knowledge of capital cost is a precondition in it. Thus the seller should say: ‘My capital involved in this deal is so much or this thing has cost me (Dm) 100 and I sell it to you for this cost plus a profit of (Dm) 10’. This is lawful without any controversy among the jurists”
- Murabaha is a contract of trustworthiness because the buyer must know the original price, additional expenses if any and the amount of profit

The Need for Murabaha

- The purpose of Murabaha (and Tawliyah) is the protection of innocent consumers lacking expertise in trade from the tricks and stratagems of cunning traders
- It is important to observe, however, that modern Murabaha is conducted mainly by banks and financial institutions on a deferred payment basis
- Upon execution of Murabaha, a receivable is created that becomes the liability of the customer
- The aspect of disclosing details of the banks' cost price, though a necessary condition of Murabaha, does not remain a serious issue between the parties, particularly in view of the fact that the customer himself is involved one way or the other in locating and purchasing the goods

Specific Conditions of Murabaha

- The aspeGoods to be traded should be real, but not necessarily tangible
- Any currency and monetary units that are subject to the rules of Bai' al Sarf cannot be sold through Murabaha, because currencies have to be exchanged simultaneously
- Credit documents that represent debt owed by someone cannot be the subject of Murabaha
- The seller must state the original price and the additional expenses incurred on the sale item and he must be just and true to his words
- The prospective seller in Murabaha is required to disclose all aspects relating to the commodity, any defects or additional benefits and the mode of payment to the original seller/supplier

Specific Conditions of Murabaha (cont'd)

- The margin of profit on the price so reached has to be mutually agreed upon between buyer and seller
- Any Majhul (unspecified) price cannot become a basis for Murabaha, as it involves the semblance of uncertainty which renders Murabaha sale unlawful
- An incorrect statement about the original price/cost of goods
 - Imam Malik: the buyer may rescind the sale unless the seller returns to him the difference between his real and the stated cost, in which case the sale is binding
 - Hanafis: give the buyer the unqualified option to rescind
 - Hanbalis: consider the sale binding after the return of the difference between the correct and the stated costs
 - The Shafi'ies: two versions; one of which agrees with the Hanbalis and the other with the Hanafis
- The purchaser in Murabaha has the right of option, even in the absence of this condition or its stipulation in the contract

Bai' Murabaha and Credit Sale (Murabaha-Mu'ajjal)

- Murabaha as an alternative to interest-based financial transactions assumes importance only when it is transacted on a deferred payment basis
- The substitution of prompt payment by deferred payment has been justified on the grounds that upon execution of the transaction, the receipt of the agreed price becomes the sole right of the seller
- Therefore, it is within his discretion to postpone it for the convenience and ease of the purchase

Possible Structures of Murabaha

- One possible solution is that banks may establish specific purpose companies to undertake trading (and leasing) activities and the staff with relevant specialized expertise may be entrusted the job of trading in goods so as to fulfil the Sharī'ah essentials of Murabaha–Mu'ajjal
- The options for conducting Murabaha are:
 - Direct trading by bank management
 - Bank purchases through a third party/agent
 - Murabaha through the client as agent

Murabaha to Purchase Orderer (MPO)

- Modern Murabaha transactions by banks normally take the form of Murabaha to Purchase Orderer (MPO) (Murabaha lil 'amri bil Shira or 'Murabaha li Wa'da bi Shira)
 - an arrangement wherein the bank, upon request by the customer, purchases an asset from a third party and sells the same to the customer on a deferred payment basis
- The need for MPO arises from the following factors:
 - Commercial banks, and likewise Islamic banks, do not normally undertake business where they might be maintaining inventories of various goods
 - It may not be possible for Islamic banks to purchase all items in advance for Murabaha to their clients
 - The clients might be in need of specific quality goods and the banks might not be even aware of the source of their availability
 - Regulators/central banks normally do not allow the banks to undertake trading as their core business with the dual purpose of keeping them liquid/saving them from the asset and market risks related to goods and to avoid cartels and monopolies in the commodity market

MPO - A Bunch of Contracts

- Modern Murabaha also involves an agency relationship between the bank and any third party or even the client
- The MPO in this form would comprise three distinct contracts:
 - A master contract which defines the overall facility to be availed, followed by an agreement to purchase or promise by the client to purchase the article when offered by the bank
 - An agency contract whereby the agent, who could be a client or any third party, has to purchase the item from the market or the supplier identified by the client and take its possession on behalf of the bank; this should be separate from the Murabaha agreement
 - The actual Murabaha contract should be concluded when the bank owns the concerned commodity

MPO – The Customer as the Bank's Agent to Buy and Related

- The general structure of this variant of Murabaha is the following:
 - The customer approaches the bank with a request for the purchase of any commodity that can be legally sold on credit
 - The bank appoints the client its agent to purchase the item(s)
 - The bank purchases the commodity through the client as agent
 - The bank makes payment to the vendor/supplier.
 - The customer takes delivery of the item on behalf of the bank as agent
 - The customer makes an offer to purchase and the bank accepts the offer – the bank transfers the title over to the customer upon execution of Murabaha
 - The customer makes payment on a deferred basis without any rollover, discount or rebate

MPO – The Customer as the Bank's Agent to Buy and Related (cont'd)

- The above structure involves the following stages/steps:
 - pre-promise understanding;
 - promise stage;
 - agency stage;
 - acquiring possession;
 - execution of Murabaha;
 - post-execution of Murabaha
- The nature of the relationship in the above arrangement would be:
 - Bank and client: principal and agent
 - Bank and client: promisor and promisee
 - Bank and supplier: buyer and seller
 - Bank and client: seller and buyer
 - Bank and client: creditor and debtor

Issues in Murabaha

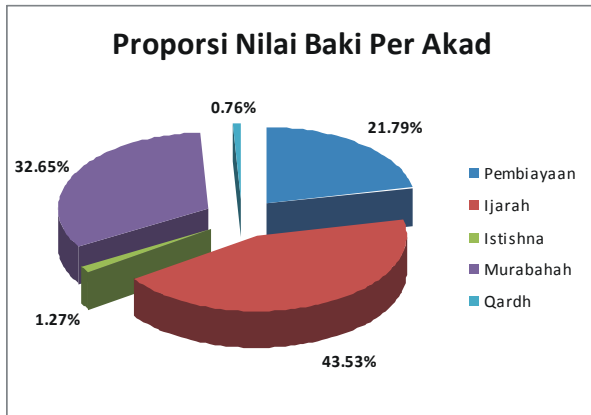
- One objection sometimes raised in Murabaha is that Murabaha operations by Islamic banks constitute two sales in one; the contract of promise and the sale deed
- The issues:
 - Avoiding buy-back (Bai' al 'Inah)
 - Khiyar (option to rescind the sale) in Murabaha
 - Time of executing Murabaha
 - Defaults by the clients
 - Rebates on early payment
 - Rollover in Murabaha
 - Murabaha through shares
 - Commodity murabaha

Risk Management in Murabaha

Tipe Pembiayaan	Sumber Risiko Kredit	Keterangan
<i>Murabahah</i>	Risiko penyelesaian (gagal bayar)	Kegagalan dalam pembayaran pinjaman yang mengakibatkan bank syariah kehilangan modalnya (kerugian piutang)
		Konsumen mungkin bertujuan menunda pembayaran untuk mengambil keuntungan ketidak-adaan beban pinalti (ketidaksesuaian arus kas)
	Risiko penjamin	Ketika bank syariah gagal untuk memulihkan aktivasnya dari nasabah (dalam bentuk jaminan/agunan). Selain itu juga risiko dari kegagalan untuk mengajukan klaim terhadap guarantor
		Berpindahnya profil risiko kredit dari konsumen ke penjamin (jumlah yang diinvestasikan mungkin tidak tertutupi)
	Risiko agunan	Agunan yang dimiliki bank mungkin terjual pada harga diskon (<i>haircut</i>)

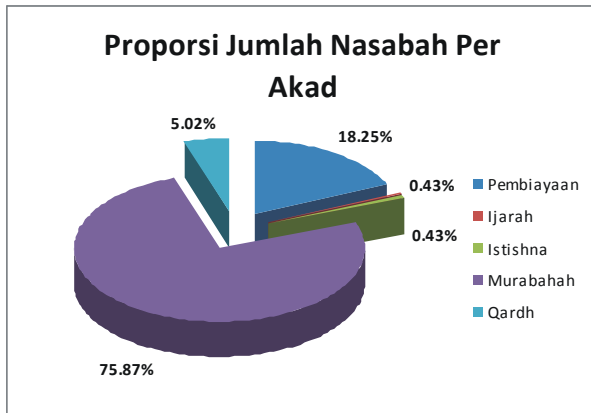
Proporsi Nilai Baki

- Proporsi nilai baki menurut jenis akad



Proporsi Jumlah Nasabah

- Proporsi jumlah nasabah menurut jenis akad



Distribusi Kualitas Aktiva Produktif

- Distribusi Kualitas Aktiva Produktif: Analisis Sektor Ekonomi

Sektor Ekonomi	Proporsi Baki terhadap total akad Murabahah (dlm %)	Proporsi pinjaman non lancar -KL, D, M- (dlm %)
Jasa-jasa Sosial masyarakat	38.36%	2.06%
Perdagangan, Restoran, dan Hotel	16.71%	9.19%
Jasa-jasa dunia Usaha	15.87%	4.62%
Pengangkutan Pergudangan	7.73%	9.10%
Konstruksi	6.94%	7.30%
Pertanian dan Kehutanan	5.92%	4.16%
Industri Pengolahan	5.48%	16.46%
Pertambangan	2.96%	3.59%
Listrik, gas dan Air	0.02%	0.00%

Distribusi Kualitas Aktiva Produktif

- Distribusi Kualitas Aktiva Produktif: Analisis Jenis Penggunaan

Jenis Penggunaan	Proporsi Baki Terhadap Total Akad (%)	Proporsi Nilai Pinjaman Non Lancar (KL, D, M) (dalam %)
Investasi Lainnya	33.68%	8.55%
Modal Kerja Lainnya	27.44%	9.26%
Konsumsi lainnya	18.49%	1.55%
Konsumsi dalam rangka kepemilikan rumah sampai dengan tipe 70	5.36%	1.55%
Konsumsi dalam rangka kepemilikan rumah sampai di atas tipe 70	4.65%	3.99%
Konsumsi dalam rangka pemilikan kendaraan bermotor	3.10%	0.88%
Investasi Agrobisnis	3.01%	0.59%
Investasi Properti	1.77%	1.76%
Modal Kerja Agrobisnis	1.25%	4.15%
Konsumsi dalam rangka pemilikan ruko	0.65%	2.82%
Modal Kerja Properti	0.61%	6.16%

Matriks Transisi

- Matriks Transisi: Murabahah

Cohort 1 bulan

Dari \ Ke	L	DPK	KL	D	M
L	84.445%	2.013%	0.079%	0.027%	0.046%
DPK	20.200%	57.164%	7.663%	0.291%	0.270%
KL	5.222%	6.670%	57.275%	13.908%	1.274%
D	2.860%	1.250%	5.591%	52.816%	23.009%
M	2.126%	0.372%	0.856%	1.150%	79.908%

Cohort 3 bulan

Dari/Ke	L	DPK	KL	D	M
L	73.816%	2.864%	0.156%	0.031%	0.068%
DPK	20.432%	36.046%	14.880%	1.037%	0.400%
KL	7.996%	5.909%	25.654%	25.098%	4.983%
D	3.103%	1.999%	2.823%	15.956%	44.277%
M	2.761%	0.516%	1.507%	0.614%	65.067%

Durasi 3 bulan

Dari/Ke	L	DPK	KL	D	M
L	33.2115%	32.3169%	16.5954%	13.0534%	6.3679%
DPK	1.6673%	43.3327%	30.1989%	20.1879%	4.3286%
KL	0.1982%	2.6037%	39.2483%	48.5413%	9.3048%
D	0.0756%	0.4387%	4.0704%	74.6230%	20.7216%
M	0.1396%	0.3597%	2.1157%	7.4301%	89.7808%

Golongan Debitur

● Golongan Debitur: Murabahah

Golongan Debitur	Kolekt	Observ	Nilai Baki (Juta Rp)	Proporsi Baki (%)	
				Per akad	Per gol debit per akad
Pemerintah Pusat	L	26	2,281	0.03%	100.00%
Pemerintah Daerah	L	1	13	0.00%	100.00%
Badan dan Lembaga Pemerintah, BUMN (Pertamina, PLN)	L	5	1,347	0.02%	100.00%
BUMN dan BUMD	L	6	579	0.01%	100.00%
BUMN dan BUMD	DPK	2	54,856	2.46%	24.87%
	L	267	146,325		66.33%
	M	2	19,425		8.81%
Sektor Swasta	L	21	129,386	1.44%	100.00%
Sektor Swasta	L	12	4,535	0.05%	100.00%
Sektor Swasta	D	13	39,361	36.49%	1.20%
	DPK	104	518,280		15.83%
	KL	48	138,641		4.23%
	L	1,411	2,482,769		75.82%
	M	53	95,319		2.91%
Sektor Swasta	D	317	43,474	58.45%	0.83%
	DPK	3,078	327,917		6.25%
	KL	690	77,217		1.47%
	L	58,538	4,660,522		88.87%
	M	1,112	134,938		2.57%
Bukan Penduduk	D	1	30	1.06%	0.03%
	DPK	4	375		0.39%
	KL	2	2,254		2.37%
	L	122	85,907		90.26%
	M	4	6,609		6.94%

- Muhammad Ayub (2007), *Understanding Islamic Finance*. West Sussex, U.K.: John Wiley & Sons Ltd. (Chapter 9)