

Inconsistency of Shariatization: Exploring The Implementation of Sharia Principles In Baitul Maal wa Tamwil

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Abstract

This article aims to explain the inconsistency of *Baitul Maal Wa Tamwil* (abbreviated as BMT) in implementing Sharia principles. This is a case study research with an empirical legal approach which was conducted in LKMS BMT Almabruk Inc. (BMT Almabruk) of Tanah Datar Regency and BMT Al Fattah of Solok City. Data were obtained through interviews with BMT management and related documents from BMT. The result of study showed that firstly, Sharia compliance in fund distribution contract in the form of *murabahah* was divided into two: *murabahah* through cooperation with partners and *murabahah* with a *wakalah* contract. In the first model, Sharia implementation in *Murabahah* was consistent, meanwhile it was inconsistent in the second one. Similarly, it still contained the elements of usury in determining its administrative costs. Second, Sharia compliance in the fund collection contract appears to be inconsistent in *mudharabah* savings. Third, Sharia Supervisory Board at BMT Almabruk had been consistent in monitoring Sharia principles. On the other hand, the performance of BMT Al Fattah had been inconsistent in monitoring the Sharia principles themselves. Based on the results of the study, a new scheme needs to be found for BMT to be consistent with the principles of Sharia economic law, for instance, administrative costs are used as unit costs which are included in the acquisition cost; the implementation of *Sadd adz-Dzariah* concept in the merger of two

contracts; the implementation of *Murabahah* contract is carried out only after the *Wakalah* contract is fully completed or the goods have become the property of BMT; and the *Mudharabah* contract which applies to savings that can be withdrawn at any time is replaced by Hajj savings or Umrah savings that have a fixed term.

Keywords: *Baitul Maal Wa Tamwil, Inconsistency, Sharia Principles, Shariatization.*

Introduction

Baitul Maal wat Tamwil (BMT) is one of the BMTs that still exists today.¹ However, it is not uncommon for these Islamic financial institutions to face various problems, such as legal certainty, which is used as a legal umbrella for their operations, bankruptcy,² capital constraints, default, sharia compliance, management and human resources.³ Apart from these issues, the most fundamental problem is the implementation of Sharia principles/*fiqh muamalah* in the operations and performance of the managers and the Sharia Supervisory Board (abbreviated as DPS in Indonesian) of BMT. Many assume that Sharia financial institutions are just labels, but their performance is still like the conventional ones.⁴

Amidst the challenges, several BMTs still try to survive and continue to grow, including LKMS BMT Almabruk Inc. (BMT Almabruk) and BMT Al Fattah. Based on the annual performance reports for 2021 and 2022, these two Islamic financial institutions had managed to achieve encouraging income and continue to show an increase in assets, as in the case of BMT Almabruk, which increased from IDR 477,072,765 in 2021 to IDR 486,185,824 in 2022. At BMT

¹ Fashihuddin Arafat, "Eksistensi BMT Sebagai Baitul Maal Wat Tamwil Dan Problematika Hukumnya," *El-Qist: Journal of Islamic Economics and Business (JIEB)* 10, no. 1 (June 2020): 89–104, <https://doi.org/10.15642/elqist.2020.10.1.89-104>; Haerudin et al., "The Future Growth for Islamic Microfinance in Indonesia: Baitul Maal Wat Tamwil Domains," *International Journal of Professional Business Review* 8, no. 7 (July 2023): e01632, <https://doi.org/10.26668/businessreview/2023.v8i7.1632>.

² Muh. Yusron Rusdiyono and Amir Mu'allim, "Bankruptcy Settlement of Baitul Maal Wa Tamwil in Yogyakarta: An Islamic Law Perspective," *Millah: Journal of Religious Studies* 21, no. 2 (July 2022): 553–82, <https://doi.org/10.20885/millah.vol21.iss2.art9>; Adi Prihasmoro et al., "Sharia Economic Bankruptcy Law (Al-Taflis) and the Dualism of Court Competency in Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 23, no. 2 (August 2024): 227–39, <https://doi.org/10.31958/juris.v23i2.11045>.

³ Syukri Iska et al., "The Implications of the Countercyclical COVID-19 Policy on the Performance of Rural Banks and Sharia Rural Banks in Indonesia," *Juris: Jurnal Ilmiah Syariah* 23, no. 1 (June 2024): 143–53, <https://doi.org/10.31958/juris.v23i1.12329>.

⁴ Feisal Khan, "New Label, Same Vintage? Reassessing Participatory Islamic Banking in Pakistan," *Journal of Economic Issues* 58, no. 3 (July 2024): 852–70, <https://doi.org/10.1080/00213624.2024.2382028>.

Al Fattah, the increase occurred from IDR 356,433,000 in 2021 to IDR 364,481,000 in 2022. This significant increase in income proves that the challenges faced by other BMTs could be overcome by BMT Almabruk and BMT Al Fattah. However, this achievement must still be balanced with strict adherence to Sharia principles, as stipulated in Law No. 1 of 2013 on Microfinance Institutions, which emphasizes that the business activities of microfinance institutions must be based on Sharia principles.⁵ This regulation also explains that Islamic financial institutions are required to follow the provisions of Islamic economic law and the fatwas of the National Sharia Council in carrying out their operations, both in terms of fund raising products and financing products.⁶

However, based on the survey, there are indications that these two microfinance institutions are not yet consistent in implementing Sharia principles, such as the implementation of the Murabahah contract, which is combined with the Wakalah contract, indicating that BMT does not make purchases but lends money with Sharia packaging (Murabahah). In the contract document, there is only the principal price and it is not written how much the profit is. In the Mudarabah, the savings can be withdrawn at any time, so it is not possible to distinguish which savings are Wadiah and which are Mudarabah. Then the management fee is determined on the basis of the nominal loan. And in one of these Shariah microfinance institutions, no DPS report had been found in the annual members meeting report for the last three years.

Studies on Shariah principles in Islamic microfinance institutions can be divided into several categories. First, studies that highlight the implementation of Shariah principles in Islamic financial institutions, such as Fadia Fitriyanti et al. who analyzed the challenges and frameworks surrounding Islamic financial institutions that must maintain a clear vision and be in line with Islamic principles to ensure that their operations remain faithful to Islamic principles.⁷ Meanwhile, Eko Rial Nugroho's research placed more emphasis on the application of Sharia compliance in Islamic banking product innovation.⁸ Akhlaq emphasized the

⁵ Prawitra Thalib et al., "The Urgence Regulation of Business Activities on Islamic Microfinance Institution According Law No. 1 Year 2013 of Microfinance Institutions," *Arena Hukum* 14, no. 2 (August 2021): 207–21, <https://doi.org/10.21776/ub.arenahukum.2021.01402.1>.

⁶ Ipuk Widayanti and Silvia Waning Hiyun Puspita Sari, "The Role of DSN-MUI Fatwa in Indonesian Sharia Banking Development Flows in the Industrial Revolution 4.0," *El-Qish: Journal of Islamic Economics* 3, no. 1 (2023): 29–44, <https://doi.org/10.33830/elqish.v3i1.6519.2023>.

⁷ Fadia Fitriyanti et al., "The Implementation of Islamic Principles in Sharia Financial Institutions," *Fiat Justisia: Jurnal Ilmu Hukum* 17, no. 2 (April 2023): 153–62, <https://doi.org/10.25041/fiatjustisia.v17no2.2849>.

⁸ Eko Rial Nugroho, "Implementation Of Sharia-Compliance In Islamic Bank Product Innovations," *Prophetic Law Review* 3, no. 2 (December 2021): 173–197, <https://doi.org/10.20885/PLR.vol3.iss2.art4>.

importance of Sharia compliance in Islamic financial institutions.⁹ The same study was also conducted by Ayedh et al. but focused more on the integration of Sharia compliance in the information systems of Islamic financial institutions,¹⁰ similar with the study conducted in Ethiopia by Hailu and Tekdoğan¹¹. In line with this, Pamuji et al. focused their study on the application of Sharia contracts in Sharia financial institutions.¹² Second, studies that highlight the rules conceptually in Islamic financial institutions. This is like the study of El Maza et al. on the regulation of Islamic economic law in the development of Islamic financial institutions.¹³ Meanwhile, Zaini studied fatwas on Sharia products at Islamic financial institutions.¹⁴ On the other hand, several studies emphasize the importance of the Sharia Governance Framework (SGF) for Islamic financial institutions, such as the study by Alam et al.¹⁵, Md Zain¹⁶, and Rosli Abdul Aziz et al.¹⁷

Complementing previous studies, this study attempts to highlight the inconsistency in the application of Sharia economic principles in Sharia financial institutions, especially non-banks, such as in LKMS BMT Almabruk (BMT Almabruk) and BMT Al Fattah. This inconsistency was found in the contracts and performance of the Sharia Supervisory Board. This study is important

⁹ Muhammad Akhlaq and Muhammad Asif, "The Importance of Sharia Compliance in Islamic Finance," *Tanaqur* 5, no. 1 (2024): 196–212.

¹⁰ Abdullah Mohammed Ayedh et al., "The Integration of Shariah Compliance in Information System of Islamic Financial Institutions," *Qualitative Research in Financial Markets* 13, no. 1 (June 2021): 37–49, <https://doi.org/10.1108/QRFM-05-2017-0042>.

¹¹ Suadiq Mehammed Hailu and Ömer Faruk Tekdoğan, "Ensuring The Compliance of Islamic Finance Applications with Shariah Principles in Ethiopia: The Way Forward," *Hitit İlahiyat Dergisi* 22, no. 1 (June 2023): 139–68, <https://doi.org/10.14395/hid.1247875>.

¹² Alif Endy Pamuji, Ach Faqih Supandi, and Miftahus Sa'diyah, "Islamic Financial Institutions as Strengthening The Economy of The Ummah (Study on The Application of Shariah Agreements in Islamic Financial Institutions)," *OECONOMICUS Journal of Economics* 7, no. 1 (December 2022): 24–36, <https://doi.org/10.15642/oje.2022.7.1.24-36>.

¹³ Rina El Maza et al., "Sharia Economic Law Regulation on The Development of Sharia Financial Institutions in Indonesia," *Journal of Social Work and Science Education* 3, no. 2 (April 2022): 154–67, <https://doi.org/10.52690/jswse.v3i2.290>.

¹⁴ Faizi Zaini and Mohd Sollehudin Bin Shuib, "Fatwa on Sharia Products and Its Role in The Development of Islamic Finance Industry," *Islamadina: Jurnal Pemikiran Islam* 22, no. 2 (November 2021): 189–207, <https://doi.org/10.30595/islamadina.v22i2.11859>.

¹⁵ Md. Kausar Alam, Fakir Tajul Islam, and Mahfuza Kamal Runy, "Why Does Shariah Governance Framework Important for Islamic Banks?," *Asian Journal of Economics and Banking* 5, no. 2 (August 2021): 158–72, <https://doi.org/10.1108/AJEB-02-2021-0018>.

¹⁶ Siti Noradibah Md Zain and Zurina Shafii, "The Impact of Shariah Governance to Financial and Non-Financial Performance in Islamic Financial Institutions (IFIs): A Literature Survey," *International Journal of Islamic Business* 3, no. 2 (December 2018): 27–40, <https://doi.org/10.32890/ijib2018.3.2.3>.

¹⁷ Rosli Abdul Aziz, Aisyah Abdul-Rahman, and Ruzian Markom, "Best Practices for Internal Shariah Governance Framework: Lessons from Malaysian Islamic Banks," *Asian Journal of Accounting and Governance* 12, no. 1 (2019): 1–14, <https://doi.org/10.17576/AJAG-2019-12-15>.

considering that BMT is a non-bank Sharia financial institution that is very close to lower class community¹⁸ that may not have access to the financial institutions of the banking sector. In addition, the existence of BMT is very much needed by the Islamic community,¹⁹ so BMT²⁰ must be able to demonstrate its quality and professionalism as a Sharia-compliant financial institution.

On the other hand, this study is important considering that BMT, as a Sharia microfinance institution based on the surrounding community, is very likely to apply and become an example of the consistent implementation of Sharia principles in each of its products because its clients are around the institution.

A qualitative case study approach was used in this research.²¹ The focus of this study is on BMT Almabruk in Tanah Datar Regency and BMT Al Fattah in Solok City. These two Islamic microfinance institutions have different legal entities; BMT Almabruk is an incorporated company, while BMT Al Fattah is a cooperative. In West Sumatra, there are only two legal forms of BMT that are incorporated companies and cooperatives. There is only one BMT in the form of an incorporated company that is BMT Almabruk. These two institutions were selected as representatives of the two types of legal entities recognized by Law No. 1 of 2013. The data were collected through in-depth interview techniques and documentation. The primary data were obtained through interviews with the management of BMT Almabruk such as the commissioner, the Sharia supervisory board, and the director. While in the management of BMT Al Fattah there were the management and Sharia supervisory board. Then, the secondary data were obtained from financial documents such as *Murabahah*, *Wakalah*, savings and deposits. The collected data were analyzed through reduction, presentation,

¹⁸ Adhitya Ginanjar and Salina Kassim, "Can Islamic Microfinance Alleviates Poverty in Indonesia? An Investigation from the Perspective of the Microfinance Institutions," *Journal of Islamic Monetary Economics and Finance* 6, no. 1 (March 2020): 77–94, <https://doi.org/10.21098/jimf.v6i1.1203>; R D Putra Sofana, "The Role of Islamic Micro Financial Cooperatives (Baitul Maal Wat Tamwil) in Local Economic Development," *Semarang State University Undergraduate Law and Society Review* 2, no. 1 (January 2022): 39–56, <https://doi.org/10.15294/lsr.v2i1.53479>.

¹⁹ Andri Martiana, Zenza Chessara Novada Panena, and Nasrul Fahmi Zaki Fuadi, "Pro-Poor Capital Assistance: A Strategic Analysis of Baitul Maal Wat Tamwil Microfinance," *Al-Uqud : Journal of Islamic Economics* 6, no. 1 (January 2022): 1–13, <https://doi.org/10.26740/aluqud.v6n1.p1-13>.

²⁰ Siti Asiyah, "Building Loyalty Based Sharia in Financial Services Companies (Study on BMT Sidogiri Pasuruan)," in *Proceedings of the 2018 International Conference on Islamic Economics and Business (ICONIES 2018)* (Paris, France: Atlantis Press, 2019), <https://doi.org/10.2991/iconies-18.2019.74>.

²¹ Rizal Agus, Rahmat Widia, and Enny Segarahati, "Sharia Financial Inclusion Solutions and Strategies : Case of MSE-BMT in North Sumatra-Indonesia," *International Journal of Business and Management* 7, no. 2 (2019): 1–11, <https://doi.org/10.20472/BM.2019.7.2.001>.

inference, and verification.²² To ensure data validity, source triangulation and method triangulation were carried out.

Discussion

Based on the analysis of BMT's financial statements, BMT Almabruk and BMT Al Fattah derive their main income from *Murabahah* financing. These two Islamic microfinance institutions offer *Murabahah* financing products and savings products based on the principles of *Wadi'ah Yad Dhamanah* and *Mudharabah*. Based on an interview with the director (Ade: July 14th, 2023) while checking documents related to the financing agreement, BMT Almabruk revealed that they charged an administrative fee calculated based on the financing ceiling. In addition, there is a combination of the implementation of the *Wakalah* and *Murabahah* agreements.

The same thing happened at BMT Al Fattah, the results of an interview with the management (Unang: July 09th, 2023) revealed that *Murabahah* financing was also juxtaposed and signed with a *Wakalah* agreement. The difference between BMT Almabruk and BMT Al Fattah lies in the *Mudharabah* savings, where BMT Al Fattah treats *Mudharabah* savings as regular savings that can be withdrawn at any time and the customer still receives a share of the profits.

The performance of Islamic microfinance institutions like BMT Almabruk and BMT Al Fattah can be seen from three main aspects that are financing, fundraising, and the role of the Sharia Supervisory Board (abbreviated as DPS in Indonesian). In this case, the implementation of Sharia principles in financing and fundraising is evaluated based on Sharia economic law and the fatwa of the National Sharia Council (abbreviated as DSN in Indonesian), as well as the avoidance of elements prohibited by Sharia.²³ Thus, the evaluation of the performance of these two institutions focused on the extent to which Sharia principles were applied in each contract, both in the financing provided, in the funds collected from the community, and in the supervision carried out by the DPS.

The Inconsistency of Sharia Implementation in BMT

Based on information obtained from interviews with Director Ade (September 7th, 2023) and statements from Commissioner IN (October 6th, 2023), the implementation of *Murabahah* financing at BMT Almabruk was as follows:

“The customer applies for financing to purchase goods with a principal price of IDR. 10,000,000. If the goods are available at BMT, the customer will

²² Matthew B Miles and A Michael Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (SAGE Publications Inc, 1994).

²³ Hilma Rohmatul Ummah, Adang Sonjaya, and Jujun Jamaludin, “Sharia Fintech: Crowdfunding as MSMEs Financing,” *Al-Muamalat: Jurnal Ekonomi Syariah* 11, no. 1 (January 2024): 115–36, <https://doi.org/10.15575/am.v11i1.28808>.

only sign a *Murabahah* contract that includes the principal of the financing plus the agreed *Murabahah* margin. If the goods are available through BMT's partner, BMT will contact the partner to provide the goods according to the customer's request. Then, the customer can sign a *Murabahah* contract that includes the principal and the agreed margin. After that, the customer can take the ordered goods from the supplier by presenting a letter of introduction from the BMT, and payment for the goods is made directly from the BMT to the supplier. If the goods are not available through the partner, the BMT will use an additional contract in the form of a *Wakalah* contract, which basically gives the customer the authority to purchase the goods, and then the BMT will provide a promise (*wa'ad*) for the financing facilities provided. The *Murabahah* contract is then executed and the contract is signed on the same day as the *Wakalah* and *Murabahah* contracts so that the customer does not have to go back and forth to the BMT. Customers are required to submit receipts to BMT".

Regarding the administration fee for financing, Director Ade (September 7th, 2023) confirmed by Commissioner IN (September 7th, 2023) explained that BMT charges an administration fee of 1% of the cost of goods if the price of goods is more than IDR 2,000,000. Meanwhile, for goods with a price below IDR 2,000,000, the administration fee applied is IDR 30,000. The policy of imposing administration fees by the operational management has also been conveyed in the General Meeting of Shareholders (abbreviated as RUPS in Indonesian).

In line with LKMS BMT Almabruk, BMT Al Fattah's financing practices are fully focused on *Murabahah* financing (100% *Murabahah*). The management (HS September 6th, 2023) stated:

For financing with procurement of goods through BMT partners, customers sign a *Murabahah* agreement directly with BMT. After signing the agreement, the customer can immediately collect the desired goods from the BMT partner. When a customer applies for *Murabahah* financing to purchase goods (such as vegetables) and other items, the customer will receive financing according to the amount applied for. The agreement signed by the customer for the financing of the goods purchased by the customer is a *Murabahah* and *Wakalah* agreement. When the customer makes the financing, the agreement is signed simultaneously, starting with the *Wakalah* agreement and then the *Murabahah* agreement, so that customers do not have to come back and forth to BMT. In addition, the investigators also examined information regarding the management fees charged by BMT Al Fattah. According to a statement by HS (Management: December 3rd, 2023), "BMT's management fees are determined based on the costs incurred and the risks faced, which are calculated in real terms."

In terms of fundraising products, both BMTs use the *Wadiah Yad Dhamanah* contract, where in this contract the customer allows the BMT to circulate his money and the BMT does not promise anything (bonus) for the use

of the funds. The difference at BMT Al Fattah is a savings contract that uses the Mudharabah contract, but allows customers to withdraw their money at any time, just like regular Wadiah savings.

Based on the explanation of the implementation of financing and fundraising in the two BMTs above, as well as the examination of the financing documents related to *Murabahah*, *Wakalah*, and deposits, this can be analyzed in terms of the consistency of the application of Shariah principles by the BMTs as follows:

The *Murabahah* contracts implemented through the provision of goods by BMT or cooperation with partners have been consistently carried out in accordance with the principles of Islamic economic law, where the goods traded were available or ordered by BMT and the acquisition cost and profit were known and agreed upon in a transparent manner.

This is in line with the opinion of the *Fuqaha* who state that *Murabaha* is a trustworthy sale and purchase²⁴, selling goods at the initial price (acquisition cost)²⁵ with an additional known and agreed upon profit.²⁶ Furthermore, the *Fuqaha* require that the initial price or capital must be known together and the first contract must be valid.²⁷ Includes valid terms and conditions for buying and selling²⁸ perfect/full ownership by the seller of the goods to be sold.²⁹

The practice of *Murabahah* in cooperation with partners has fulfilled the provisions of *Murabahah* outlined by the *fuqaha*, the price is clear, the profit is clear, and in principle the goods are the property of the seller, this is also in accordance with the word of Allah in The Quran Chapter 2 Verse 275:

وأحل الله البيع وحرم الربا

However, in the *Murabahah* contract, which uses the *Wakalah* contract, there are indications of inconsistency with Sharia principles as follow:

²⁴ Wahbah Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adillatuh*, IV (Beirut: Dar al-Fikr, 1989).

²⁵ Abdurrahman Al-Jaziri, *Kitab Al-Fiqh 'Ala Al-Madzhab Al-Arba'ah*, III (Beirut: Dar al-Kutub al-Ilmiyah, 1990).

²⁶ Muhammad salah Muhammad Aş-şāw, *Musykilah Al-Itisyam Fi Al-Bunuk Al-Islamiyah Wa Kaifa 'Aljubā Al-Islām* (Kairo: Dār al-Mujtma, 1990).

²⁷ Sofyan Sulaiman, "Penyimpangan Akad Murābahah Pada Perbankan Syariah Di Indonesia," *IQTISHODIA | Jurnal Ekonomi Syariah* 1, no. 2 (2016): 1–16, <https://doi.org/https://doi.org/10.35897/iqtishodia.v1i2.61>.

²⁸ Asy-Syafii, *Al-Umm*, III (Beirut: Darul Kutub Al Ilmiyah, 1993).

²⁹ Dewan Syariah Nasional-Majelis Ulama Indonesia (DSN-MUI), "Akad Jual Beli," *Fatwa DSN MUI*, no. 021 (2017): 294, <https://dsnmu.or.id/kategori/fatwa/page/5/>.

Acquisition Cost

At the time of entering the *Murabahah* contract, both parties did not know for sure what the base price of the goods was because the BMT only received information based on a price survey from the customer. In fact, the actual price may be different from the customer's survey price. The same applies to the *Wakalah* contract, although it had been signed and there was a promise to purchase goods in accordance with the contract. However, the *Wakalah* contract was not perfectly implemented because there was no delivery of the goods either directly or legally, and there was no transparent communication of the actual purchase price of the goods, except for the presentation of a receipt, and even then, the truth was not verified, and some people did not even return the receipt, hence it could not be known for certain what the actual cost of the goods was. Moreover, in this *Wakalah* there are hidden costs that the customer has to bear in order to purchase the goods, such as transportation costs and other services, but these are never calculated in the contract as if they are the responsibility of the customer.

Ownership of goods for sale

From the above *Murabahah* practice, it is clear that the goods sold to the customers had not come under the direct and legal ownership and control of the Islamic microfinance institution. This was because the *Murabahah* contract was signed without any delivery of goods, only the signing of the *Wakalah* contract and the delivery of the capital plus margin.

This shows that BMT did not sell goods, but lent money to customers to buy goods according to the customer's wishes, then BMT packaged the loan in the form of an agreement that is accommodated in Islamic law that is *Murabahah wa Wakalah*.

On the one hand, both BMTs used the term *Murabahah*, but on the other hand, it was not consistent with the provisions of *Murabahah* itself, such as the purchase price which had the potential to differ from the survey price, the receipt made did not match the aspects of the goods purchased, the absence of cross-checking only accepted a receipt which was not necessarily correct and in accordance with the contract.

The reason that the customer did not have to go back and forth could not be used as an excuse for not perfecting the *Wakalah* contract first and then followed by the *Murabahah*. It cannot be used as a reason for allowing the *Wakalah* and *Murabahah* contracts to be signed before the goods actually become the property of the BMT.

In the rules of Fiqh, it is stated that “*al hukumu yaduru ma’a ‘illatibi wujudan wa ‘adaman*”.³⁰ According to Abdul Wahab al-Khalaf ³¹ Illat must be clear, measurable, and relevant to the law. M. Mustafa Syalaby has the same opinion as Abdul Wahab al-Khallaf.³²

Therefore, the reason for implementing *Wakalah* at the same time as *Murabahah* to make the customers feel at ease cannot be accepted because apart from the fact that the degree of difficulty cannot be measured, it is not relevant to the law itself and can obscure the substance of the *Murabahah*. In fact, the customers of both BMTs are mostly located around the BMT office itself, especially BMT Al Fattah which is located in the middle of the market and its customers are mostly market people themselves. This opens up opportunities to violate Sharia principles in this contract.

This is certainly not in accordance with the provisions of the principles of Islamic economic law. The BMT has made a sale and purchase of goods that it does not yet own. This is contrary to the words of the Prophet Muhammad who forbids the sale and purchase of goods that are not yet owned:

عن عبد الله بن عمر رضي الله عنهما أن النبي صلى الله عليه وسلم قال : لا يحل سلف وبيع ، ولا شرطان في بيع ، ولا ربح ما لم يضمن ، ولا بيع ما ليس عندك } . رواه الخمسة {

It also contradicts the fatwa of the National Sharia Council No. 04/DSNMUI/IV/2000 which states that "If the bank wishes to delegate the customer to purchase goods from a third party, the *Murabahah* sale and purchase agreement must be executed after the goods have become the property of the bank in principle."³³

Wahbah Zuhaili explained that when goods are sold at a price that is not yet known, the cost price is not included in the *Murabahah* principle.³⁴ In *Murabahah*, the principal price and margin must be known to both parties, nothing can be hidden in *Murabahah*. If something is hidden or unknown, then it is not included in the *Murabahah* contract and the contract is void. Thus, it is not *Murabahah*, but rather a loan practice by paying more.

³⁰ Muchlis Bahar, “Metode Penemuan Alasan Rasional Dalam Hukum Islam (Masalik Al-‘Illat),” *Fitrah: Jurnal Kajian Ilmu-Ilmu Keislaman* 1, no. 1 (2016): 177–88, <https://doi.org/10.24952/fitrah.v1i1.334>.

³¹ Abdul Wahab Al-Khalaf, *Ilmu Ushul Fiqh* (Kuwait: Dar al-Qalam, 1978).

³² M. Mustafa Syalaby, *Ta’lil Al-Ahkam* (Bairut: Dar al-Nahdhah alArabiyah, 1981).

³³ DSN-MUI, “Fatwa Dewan Syariah Nasional No. 04/DSN-MUI/IV/2000 Tentang Murabahah,” *Direktori Putusan Mahkamah Agung*, 2000, 1–6.

³⁴ Wahbah Az-Zuhaili, *Al-Fiqh Al-Islami Wa Adilatuhu*, IV (Beirut: Dar al-Fikr, 1989).

The application of the *sadd al-dzari'ah* method must be taken into consideration when deciding on a contract, so that it does not seem to make things easier, which ultimately leads to the falsity of the contract. *sadd al-dzari'ah*³⁵ (إِغْلَاقُ الْحَلَالِ وَرَدُّهُ الثَّمَمِ، وبمعنى المنع and means preventing or prohibiting) means that to be consistent in implementing the principles of Sharia, there must be an attitude of covering up all flaws that will cause harm and result in not implementing the principles of Sharia.

Regarding the administrative costs in financing, BMT Almabruk, which sets the administrative costs at 1% of the capital, needs to be further analyzed. Based on the Fatwa DSN MUI No. 19/DSN-MUI/IV/2001, the administrative costs charged to customers must be based on the costs incurred in the operation of Islamic financial institutions and should not be considered as additional costs that increase the amount of the loan. In this case, the management fees charged by BMT Almabruk did not correspond to the actual costs incurred, but were based on the principal itself. Therefore, the administrative fees charged were included in the category of usury, which is contrary to the Sharia principles and the DSN fatwa, because it contained elements of undue advantage in loans. Administrative costs should be included in the cost of acquisition so that they become an inseparable unit cost. Muhammad ṣalah Muhammad aṣ-ṣāwī stated that most scholars allow the inclusion of administrative costs in *rasul maal*.³⁶

Regarding the recording of *Murabahah* financing in the agreement signed by the customer and BMT, there was something found in the implementation of financing at BMT Al Fattah which was related to the writing of the amount of financing in the agreement. BMT Al Fattah included only the total cost price of financing in the agreement. In fact, in *Murabahah* financing, the amount of financing listed in the agreement must include the total cost price plus the agreed margin. Listing only the cost price does not fully reflect the *Murabahah* principle, as there is no clear mention of the margin, which is the right of the financial institution, even though the margin has been verbally agreed with the customer.

In the fund collection agreement, the deposit agreement was separate from the deposit form and clearly stated the deposit period and the profit-sharing ratio agreed between the BMT and the customer. In the case of the *Wadiah* savings agreement with the *Yad Dhamanah* Principle, the statement is also included directly

³⁵ Su'ud bin mulluh sultan al 'anzi, *Saddu Dzari'ai 'inda-l- Imam Ibnu Qayyim Al Jauziyyah, Wa Atsaruhu Fi Ikhtiyaratibi Alfihiyyah* ((Omman, Urdun: Daru-l-atsariyyah, 2007).

³⁶ Muhammad ṣalah Muhammad Aṣ-ṣāwī, *Musykilah Al-Istisymār Fi Al-Bunnuk Al-Islamiyah Wa Kaija 'Alijuba Al-Islam* (Kairo: Dār al-Mujtma, 1990).

on the savings account opening form, where the customer can choose the agreement to be applied to the account opened.

BMT Almabruk does not promise bonus payments to customers when they open a *Wadiah* savings account. However, in practice, BMT pays bonuses after a general meeting of shareholders is held. This is still in accordance with the *Wadiah* principle, which is the right of BMT and is not promised at the beginning of the contract. There is a difference in BMT Al Fattah, in the implementation of savings using the *Mudharabah* principle, customers are given profit sharing at a ratio of 10:90, and the BMT policy is that *Mudharabah* savings can be withdrawn at any time.

Usury Elements in Baitul Maal Wa Tamwil (BMT)

Another indicator, which is also a benchmark for the implementation of Sharia principles in Sharia financial institutions, is the absence of usury elements in any transaction carried out.³⁷ Based on the above research results, after analyzing the implementation of *Murabahah* financing and savings, as well as the determination of margins and profit sharing carried out by the two BMTs, indications of usury, *gharar*, and *maysir* were found. This means that there were indications that the pillars of *Murabahah* were not fulfilled in *Murabahah* financing using the *Wakalah* contract, such as unspecified *Murabahah* cost of goods (hence it seems speculative) and unavailability of the goods when the *Murabahah* contract was signed. This shows that there was no *Murabahah*, but only a loan of money to the customer. Similarly, since the cost price was not known with certainty, the margin was not determined on the basis of the acquisition cost of the goods, but on the basis of the amount of the loan. This practice was only a debt practice wrapped in a Sharia scheme like *Murabahah*, and it was still shrouded in usury, *gharar*, and *maysir* with the application of interest.

The use of *Wakalah* contracts in *Murabahah* financing is a contemporary idea where the original contract does not exist, but this is permitted because the principles in *Muamalah* allow for creation and innovation to facilitate goals or provide benefits to people according to the rules of Fiqh:

الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم

Basically, everything is permissible unless there is evidence that it is forbidden.

³⁷ Muhammad Maksum and Nur Hidayah, "The Mechanism of Avoiding Riba in Islamic Financial Institutions: Experiences of Indonesia and Malaysia," *Juris: Jurnal Ilmiah Syariah* 22, no. 2 (December 2023): 235–44, <https://doi.org/10.31958/juris.v22i2.6952>; Karimuddin Karimuddin et al., "Bank Interest in the Contemporary Era: Problem of Ad'afan Muda'afah Interpretation in Determining Law of Usury," *MILRev : Metro Islamic Law Review* 3, no. 1 (April 2024): 43–65, <https://doi.org/10.32332/milrev.v3i1.8948>.

However, the ability to create and innovate is not in conflict with Sharia principles, let alone with the arguments that clearly prohibit it.

The use of *Wakalah* can obscure the *Murabahah* contract itself, potentially leading to things that are not in accordance with Sharia or *Subhat* principles. A person must not undergo things that are *subhat* because Allah not only forbids what is haram, but what is *subhat* must also be avoided. In the Hadith narrated by Bukhari and Muslim:

إِنَّ الْحَلَالَ بَيِّنٌ وَإِنَّ الْحَرَامَ بَيِّنٌ وَبَيْنَهُمَا مُشْتَبِهَاتٌ لَا يَعْلَمُهُنَّ كَثِيرٌ مِنَ النَّاسِ، فَمَنْ اتَّقَى الشُّبُهَاتِ اسْتَبْرَأَ لِدِينِهِ وَعِرْضِهِ، وَمَنْ وَقَعَ فِي الشُّبُهَاتِ وَقَعَ فِي الْحَرَامِ، كَالرَّاعِي يَرْعَى حَوْلَ الْحِمَى يُوشِكُ أَنْ يَرْتَعَ فِيهِ

In fact, what is halal is clear, and what is haram is also clear. Between the two there are doubtful (vague) matters that many people do not know about. The one who stays away from doubt has purified his religion and his honor. Whoever falls into syubhat, then he falls into what is haram, like a shepherd who guards around what is forbidden, he almost slips into it (Hadith narrated by Bukhari Muslim).

Apart from this, the Prophet also condemned people who indulge in usury and all matters related to it in his hadith.

وأخرجه مسلم عن حديث جابر بلفظ : {إن رسول الله صلى الله عليه وسلم لعن آكل الربا وموكله وشاهديه هم سواء}

There is an indication of usury in the determination of the administrative costs, because the administrative costs are determined based on the principal of the financing, not based on the real costs that should be, so this also obscures *Murabahah* itself, so there is an indication of gharar in the unit cost in *Murabahah* financing. This is also supported by the opinion of Yoesrizal M. Yoesoef and Nisak Khalista³⁸ and Rahmad Kurniawan et al³⁹ stated that administrative fees must be based on the actual calculation of the costs used to complete a transaction, and that the percentage of administrative fees may not be related to the amount of funds provided unless that percentage reflects the actual costs incurred to complete the financing.

³⁸ Yoesrizal M. Yoesoef and Nisak Khalista, "Pegadaian Syariah Lhokseumawe (Sharia Economic Law Review Toward Administration Costs and Fines in Sharia Pawnshop in Lhokseumawe)," *Al-Muamalat Jurnal Hukum & Ekonomi Syariah* 4, no. 2 (2019): 121–40.

³⁹ Rahmad Kurniawan et al., "Regulasi Dan Implementasi Biaya Administrasi Pada Perbankan Syariah," *Jurnal Ilmu Hukum Tambun Bungai* 7, no. 1 (2022): 98–117, <https://doi.org/10.61394/jihtb.v7i1.221>.

The administrative fee determined on the basis of the principal of the financing is shown as additional funds. Additional funds in this debt include usury.

“Any loan that generates profit (for the lender) is usury.”

This also contradicts the fatwa of the National Sharia Council-Indonesian Ulema Council No. 26/DSN-MUI/III/2002 on Rahn and the DSN-MUI fatwa No. 11/DSN-MUI/IV/2000 on Kafalah, which regulates the administration.

In the case of customers who make a withdrawal before the maturity date, BMT will impose a penalty in the form of not giving the current month's profit share to the customer. However, if the customer does not make a withdrawal after the maturity date, BMT will automatically extend the deposit. In this automatic renewal system, BMT does not confirm to the customer whether he agrees to the renewal or not. Therefore, if the customer does not make a withdrawal after the deposit has been extended, then in principle the customer is not disadvantaged because the current month is still calculated and the profit sharing is still given. Conversely, if the customer does not make a withdrawal and BMT makes an automatic renewal, the customer can still enjoy the profit sharing on the deposit, and thus there is no element of *maisir* (uncertainty) in this transaction.

The application of the *Mudharabah* principle to savings that can be withdrawn at any time is not consistent with the provisions of the *Mudharabah* itself. Based on Bank Indonesia Regulation No. 7/46/PBI/2005, it is explained that if the fund collection is based on the *Mudharabah* principle, then the provision of profits to customers is based on the lowest balance at the end of each month. Customers are not allowed to withdraw funds outside the agreement.⁴⁰ This shows that *Mudharabah* savings are used for fixed-term savings which cannot be withdrawn at any time or as desired.

Statement from the Management of BMT Al Fattah on the implementation of *Mudharabah* savings: “Members will save on October 28th and on the 30th BMT will provide profit sharing. Will customers receive profit sharing? How will the profit sharing be calculated?”

The management of BMT, HS, explained that customers would still receive profit sharing, and the calculation of profit sharing was done automatically by the system, not manually. However, the calculation of this system still needed to be verified by the management, as the Shariah feasibility of the system was very much dependent on the implementation of the system itself. The researcher then

⁴⁰ Bank Indonesia, “Peraturan Bank Indonesia Nomor: 7/46/PBI/2005 Tentang Akad Penghimpunan Dan Penyaluran Dana Bank Yang Melaksanakan Kegiatan Usaha Berdasarkan Prinsip Syariah,” *Bank Indonesia*, 2005, h.4.

continued the verification with the developer of the system used by BMT Al Fattah. Confirmation from the system developer stated that the calculation of profit sharing on *Mudharabah* savings at BMT Al Fattah was based on the average balance of customer savings in the current month. Even if customers had been saving for only two days, they would still receive profit sharing.

From the above, the principle of *Mudharabah* itself has not been consistently implemented. In the theory of *Mudharabah*, profits can only be earned after the funds have been managed, while in the practice of BMT, they had already received profit-sharing after only two days of saving. The question is, when were the funds managed? This is therefore unclear. Also, the profit sharing based on the minimum balance in savings contains elements of usury, the profit sharing should be based on profits, not on the amount of savings. If it is based on savings, then it is the same as interest, which means it also contains usury.

Sharia Supervisory Board

BMT Almabruk has a Sharia supervisory report prepared annually by the Sharia Supervisory Board (abbreviated as DPS in Indonesian) based on information provided by the Director of BMT (Ade, October 6th, 2023). The report contains the Sharia opinion of the DPS on the operations of BMT, as well as several recommendations for improvements in the implementation of Sharia principles at BMT. This information was also confirmed to the Commissioner of BMT (IN, October 6th, 2023), who stated that the report was prepared by the DPS and submitted annually to the General Meeting of Shareholders.

An interview with the DPS (SI/Coordinator, October 20th, 2023) regarding the oversight process in place provided information consistent with the BMT Director's statement above. DPS confirmed that its role is to ensure that BMT operations are in accordance with the DSN fatwa and to conduct Sharia assessments of BMT operations. DPS also ensures that Sharia opinions on BMT operations are provided through annual supervisory reports, as well as supervision and mentoring activities conducted by DPS. Based on the above explanation, in terms of the performance and function of the DPS, it can be concluded that the implementation of the duties of DPS BMT Almabruk was in accordance with the mandate of DSN and also in accordance with the provisions contained in the Bank Indonesia Regulation. In addition, several members of the DPS also obtained certificates of competence issued by DSN MUI and BNSP.

In BMT Al Fattah, information obtained from several BMT administrators (HS, September 6th, 2023) shows that the DPS had never submitted a supervision report to the BMT, and the report did not appear in the Annual Membership Meeting report each year. The oversight process was also not routinely performed, but only when the BMT asked for advice or signature from the DPS. In such a situation, the BMT Administrator would contact the DPS by telephone or visited the DPS's residence.

AW, DPS Coordinator (September 12th, 2023), revealed that the oversight of the BMT had not been done properly. BMT only contacted or visited DPS when there were matters that required DPS approval or signature. When asked whether BMT's contracts were reviewed by the DPS, he explained that the contracts were taken from standard contracts provided by Indonesian Sharia institutions, which can be accessed online by BMT's management. Therefore, DPS believed that the contracts were correct and did not require further review.

Consistent with the DPS coordinator, AL, a member of the DPS (October 10th, 2023), also revealed that Alinofia never performed supervision because she did not understand her duties as a DPS. Although Alinofia was present at the RAT, her presence was more as a cooperative member than as a representative of the DPS. Ali said that the recommendations made by the DPS so far were based more on requests from cooperative members, although he felt incompetent because he did not have a DPS certificate.

Based on this information, it can be concluded that the implementation of the duties, powers, and responsibilities of the DPS in ensuring compliance with Sharia principles at BMT Al Fattah had not been carried out consistently, and several key issues required attention, including: First, the supervision of the implementation of the DSN fatwa and compliance with the principles of Sharia economic law in BMT's operations has not been carried out optimally. The DPS did not conduct comprehensive and continuous supervision of all aspects of BMT operations. Second, during the supervision period, the DPS did not provide a clear Sharia opinion on BMT products or operational systems. The supervision report prepared by the DPS was not submitted to authorized parties such as the DSN.

In fact, the main function of the DPS, according to the National Sharia Council (DSN) Decree No. 3 of 2000 on the Implementation Guidelines for the Determination of DPS Members in Sharia Financial Institutions, is to supervise the business activities of Sharia financial institutions so that they comply with the provisions and principles of Sharia as promulgated by the DSN.

Article 27 of Bank Indonesia Regulation No. 6/24/PBI/2004 states that the duties, authorities, and responsibilities of DPS include:

1. Ensure and monitor banking operations against fatwas issued by DSN.
2. Assess the Sharia aspects of the bank's operational policies and products.
3. Providing Sharia opinions on the implementation of the bank's operations as a whole in the bank's public reports.
4. Review new products and services that do not yet have a fatwa to request a fatwa from the DSN.

Based on information from the management of BMT Al Fattah, although this BMT already has a Sharia Supervisory Board, the results of an interview with the Chairman of the BMT Management (HS, July 15th, 2023) revealed that no reports have been submitted by the DPS for the past 3 years. All that exists was a report from the Management Supervisory Board, which only oversaw management and financial aspects, but does not cover aspects of Sharia compliance. This shows that the DPS had not effectively carried out its duties as a Sharia supervisor, which could have an impact on doubts regarding the Sharia compliance of BMT Al Fattah's operations. Meanwhile, at BMT Almabruk, the DPS performance report for the last 3 years had been fully prepared, but there were still notes of improvement related to the commitment to Sharia principles, indicating that the implementation of Sharia principles in this institution had not been fully implemented, especially in determining administrative costs.

At the Islamic microfinance institution BMT Almabruk, supervision was conducted using a special Sharia compliance assessment form. The form was used by the audit team to collect the data needed to assess operational compliance with Shariah principles. The form contained a variety of assessment criteria, ranging from employee performance, cash flow reports, funding and financing transactions, and computer system operation.

Based on KUIKM Regulation No. 16/Pelr/M.KUIKM/IX/2015, Part Three Article 14 paragraph 5, one of the main tasks of the Sharia Supervisory Board (DPS) is to conduct periodic reviews of sharia savings and financing products offered by sharia financial institutions. This is to ensure that these products continue to comply with Sharia principles, both in terms of their preparation and transactions. The performance of the DPS was still not optimal and in line with Sharia principles. In BMT Al Fattah, the DPS had not performed its duties properly as no Sharia supervision report had been submitted in the last few years.

Based on the above analysis, the inconsistency of Baitul Maal Wa Tamwil (BMT) in implementing the principles of Shariah economic law may be caused by several factors. Like other financial institutions, BMT is often caught in a dilemma between complying with Sharia principles and achieving profitability.⁴¹ The pressure to generate profits may encourage institutions to engage in practices that are not Shariah-compliant, such as charging hidden interest.⁴² In addition, the lack

⁴¹ Nizar Mohammad Alsharari and Turki Raji Alhmoud, "The Determinants of Profitability in Sharia -Compliant Corporations: Evidence from Jordan," *Journal of Islamic Accounting and Business Research* 10, no. 4 (July 2019): 546–64, <https://doi.org/10.1108/JIABR-05-2016-0055>.

⁴² Muhamad Rowi Kurniawan et al., "The Problem of Akad Murabahah in Sharia Banks: Between Profit-Oriented and Sharia Compliance," *Demak Universal Journal of Islam and Sharia* 2, no. 1 (2024): 55–66, <https://doi.org/10.61455/deujis.v2i01.97>.

of clarity in the regulations governing BMTs often leads to variability in the application of Sharia principles.⁴³ In many cases, the lack of oversight can exacerbate this situation, as legal uncertainty creates loopholes for violations of Sharia principles.⁴⁴ To correct this inconsistency, a concerted effort by various stakeholders is needed, including continued education, increased understanding of the principles of Sharia economic law and the DSN's fatwas and other regulations.

Conclusion

Based on the results of the research conducted, it can be concluded that: This study found several things, first, Sharia compliance in fund distribution products in the form of *Murabahah* is divided into two such as *Murabahah* through cooperation with partners and *Murabahah* with *Wakalah* contract. In the first model, Sharia was consistently applied, while in the second model, Sharia was not consistently applied in *Murabahah* where it still conflicted with Sharia principles in its implementation. Similarly, it still contained elements of usury and uncertainty in determining its administrative costs because it was not based on real costs but on the nominal principal of the loan. Second, Sharia compliance in collection products such as savings and deposits. It is in accordance and consistent with Islamic economic principles and has been referred to in the DSN fatwa, both in BMT Almabruk and BMT Al Fattah. There was an inconsistency in BMT Al Fattah, which implemented savings with a *Mudharabah* system, but could be withdrawn at any time. This is inconsistent with the very principle of *Mudharabah*. Third, the performance of DPS showed a difference between the two BMTs. At BMT Almabruk, the performance of the DPS had been consistent with the provisions and principles of the DPS's duties as stated in the provisions of the DSN and POJK and other regulations, while at BMT Al Fattah, its performance was inconsistent in supervising the Shariah principles themselves. This explains that there was an inconsistent Shariah-based process in Islamic financial institutions, as there was still evidence of usury elements and inconsistent supervision by the DPS. Hence, it is necessary to find a new scheme that is consistent with the principles of Islamic economic law, for instance, administrative costs are used as unit costs included in the acquisition cost; the implementation of the *Sadd adz-Dzariah* concept in the merging of two contracts;

⁴³ Adi Saifurrahman and Salina Hj Kassim, "Regulatory Issues Inhibiting the Financial Inclusion: A Case Study among Islamic Banks and MSMEs in Indonesia," *Qualitative Research in Financial Markets* 16, no. 4 (June 2024): 589–617, <https://doi.org/10.1108/QRFM-05-2022-0086>.

⁴⁴ Moch Khoirul Anwar, Ahmad Ajib Ridlwan, and Wakhidah Nur Rohmatul Laili, "The Role of Baitul Maal Wat Tamwil in Empowering Msmes in Indonesia: A Study of Indonesian Islamic Microfinance Institutions," *International Journal of Professional Business Review* 8, no. 4 (April 2023): e0913, <https://doi.org/10.26668/businessreview/2023.v8i4.913>.

the implementation of the *Murabahah* contract is carried out only after the *Wakalah* contract is fully completed or the goods are in principle really owned by the BMT; and the *Mudharabah* contract, which is applied to savings that can be withdrawn at any time, is replaced by Hajj savings, Umrah savings that have a time limit.

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