

ANALYSIS OF POWER OF ATTORNEY TO SELL AS A REQUIREMENT FOR MURABAHAH BIL WAKALAH FINANCING AT BANK SYARIAH INDONESIA

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Abstract

This article analyzes the power of attorney to sell as a condition for *murabahah bil wakalah* financing at Bank Syariah Indonesia. A power of attorney to sell is a legal document that authorizes a particular party to sell assets or goods on behalf of another party. This power of attorney is regulated in Article 1792 of the Civil Code. In this financing, the intended party is a Sharia Financial Institution. In *murabahah bil wakalah* financing, a power of attorney to sell is crucial because it guarantees the Sharia financial institution in the transaction process. With this power of attorney, financial institutions can ensure they have the right to sell the financed goods if the customer fails to fulfill their obligations. The use of this SKM raises several problems in Islamic jurisprudence, because it concerns the status of ownership of goods, the principle of justice, and the validity of the transfer of rights through a power of attorney in the context of a Sharia sale and purchase agreement, as this SKM is irrevocable or cannot be revoked. The type of legal research used is an empirical juridical approach. Legal materials were collected through literature studies, document studies, and through interviews and observations. The research concludes that the use of a power of attorney for *murabahah bil wakalah* financing at Bank Syariah Indonesia is valid because the SKM does not conflict with sharia principles, especially in the *wakalah* contract, as long as the granting of power of attorney is carried out voluntarily by the customer, with a complete understanding of its contents and consequences. This is expected to provide recommendations for financial institutions and customers in understanding and good practices related to using a power of attorney for selling.

keywords: *Power of Attorney to Sell, Murabahah Bil Wakalah, Financial Institution.*

Abstrak

Artikel ini bertujuan untuk menganalisis surat kuasa menjual sebagai syarat pada pembiayaan Murabahah Bil Wakalah di Bank Syariah Indonesia. Surat kuasa menjual merupakan dokumen hukum yang memberikan wewenang kepada pihak tertentu untuk menjual aset atau barang atas nama pihak lain, surat kuasa ini di atur dalam Pasal 1792 KUHPerdara, dalam pembiayaan ini pihak yang di maksud ialah Lembaga Keuangan Syariah, dalam pembiayaan Murabahah Bil Wakalah keberadaan surat kuasa menjual menjadi krusial karena berfungsi sebagai jaminan bagi lembaga keuangan syariah dalam proses transaksi. Dengan adanya surat kuasa ini, lembaga keuangan dapat memastikan bahwa mereka memiliki hak untuk menjual barang yang dibiayai jika nasabah gagal memenuhi kewajibannya. Penggunaan SKM ini menimbulkan sejumlah permasalahan dalam hukum fikih, karena menyangkut status kepemilikan barang, prinsip keadilan, serta keabsahan peralihan hak melalui kuasa dalam konteks akad jual beli syariah, karena SKM ini bersifat (*irrevocable*) atau tidak dapat di cabut. Jenis penelitian hukum yang digunakan adalah menggunakan pendekatan yuridis empiris. Bahan-bahan hukum dikumpulkan dengan studi kepustakaan, studi dokumen, dan melalui wawancara, serta observasi. Hasil penelitian menyimpulkan bahwa sahnya penggunaan surat kuasa menjual pada pembiayaan murabah bil wakalah di Bank Syariah Indonesia karena SKM tidak bertentangan dengan prinsip syariah terutama pada akad wakalah, selama pemberian kuasa dilakukan secara sukarela oleh nasabah, dengan pemahaman yang utuh terhadap isi dan konsekuensinya. Hal ini diharapkan dapat memberikan rekomendasi bagi Lembaga Keuangan dan nasabah dalam pemahaman dan praktik yang baik terkait penggunaan surat kuasa menjual.

Kata Kunci: *Surat Kuasa Menjual, Murabahah Bil Wakalah, Bank Syariah Indonesia.*

INTRODUCTION

Sharia banking in Indonesia is growing rapidly as an alternative financial system that not only prioritizes economic profit but also the principles of fairness, transparency, and compliance with Islamic law (sharia). One of the most widely used financing products in sharia banking is murabahah, a sale and purchase agreement in which the seller states the cost price of the goods and the profit margin agreed upon with the buyer. In the Islamic banking system, murabahah is usually combined with a wakalah contract, in which the bank authorizes the customer to purchase goods on behalf of the bank. This combination is known as murabahah bil wakalah financing. In murabahah bil wakalah financing, banks often require additional documents in the form of a Power of Attorney to Sell (SKM) signed by

the customer. This letter gives the bank the authority to sell the financed goods if the customer fails to fulfill their obligations, particularly in installment payments. Although this is considered a risk mitigation measure on the part of the bank, the use of SKM raises several legal and fiqh issues, as it concerns the ownership status of goods, the principle of fairness, and the validity of the transfer of rights through power of attorney in the context of sharia sales contracts, because SKM is irrevocable.

The ulama of the Hanafi, Maliki, Shafi'i, and Hanbali schools of thought argue that the *wakalah* contract is voluntary and can be revoked at any time by the principal (*muwakkil*), as long as the agent has not yet carried out his duties, because the *wakalah* contract is a *tabarru'* (mutual assistance) contract that is not absolutely binding. Therefore, an irrevocable SKM is considered contrary to the fundamental nature of *wakalah* in this financing, which requires a power of attorney to sell as a condition, because it gives the agent (in this case, the bank) the absolute right to execute assets without renewed permission from the principal. However, some contemporaries of the ulama, such as Sheikh Muhammad Taqi Usmani, state that *wakalah* may be made part of a financing contract, including the granting of power of attorney to sell goods by the customer to the bank, as long as it does not conflict with the principle of justice and is not used for manipulation. Wahbah az-Zuhaili also argues in his book that *wakalah* contracts are valid for use in muamalah transactions, including selling goods on behalf of the principal.¹

Muhammad Syafi'i Antonio, in his book on Islamic banking practices, states that Islamic banks can use *wakalah* contracts, including for granting power of attorney over assets financed by the bank, as long as they are in accordance with sharia principles and transparent. He supports using documents such as SKM as part of financing risk mitigation. The use of SKM is permitted under the following conditions: 1) There is consent and awareness from the customer at the time of signing the contract. 2) The purpose is solely as collateral or risk mitigation, not as a form of unjust seizure of rights. 3) It does not conflict with banking regulations and the principles of justice in Islam.²

According to the National Sharia Council – MUI in its Fatwa No. 10/DSN-MUI/IV/2000 concerning *Wakalah*, it states that: "Sharia financial institutions can act as representatives of customers to carry out certain actions in matters permitted by sharia." Although it does not explicitly mention SKM, it is permissible the

¹ Muhammad Taqi Usmani, *An Introduction to Islamic Finance* (Karachi: Idaratul Ma'arif, 2002). pp. 94-94

² Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori ke Praktik* (Jakarta: Gema Insani, 2001), pp. 128.

substance of *wakalah* (power of attorney) to sell customer assets as part of the settlement of financing obligations falls within the category of actions permitted by sharia, as long as it does not contain elements of *gharar* (uncertainty), *zhulm* (injustice), or *tadlis* (deception), and is not used unilaterally without consultation in the event of a dispute.³ The *wakalah* contract begins when the bank grants the customer the authority to purchase the financed goods, then the customer makes the purchase and hands over the goods to the bank. After the *wakalah* contract is completed, a *murabahah* contract is carried out when the goods are clear, legally owned by the bank, and per the customer's needs. The bank then sells the goods to the customer with a *murabahah* contract (sale and purchase with an agreed profit margin). The customer then pays for the goods in installments or as agreed. This practice is called *murabahah bil wakalah*.

In Indonesian positive law, the use of a power of attorney to sell is regulated in Article 1792 of the Civil Code (KUH Perdata), which states that the granting of a power of attorney is an agreement whereby a person gives power to another person to act on their behalf in performing a legal act.⁴ However, civil law also recognizes that irrevocable powers of attorney must be drafted with care, especially when it concerns the transfer of ownership rights over goods. Otherwise, powers of attorney to sell may give rise to disputes, particularly when exercising such powers is considered detrimental to one of the parties. Bank Syariah Indonesia (BSI), the country's largest Islamic financial institution, is an interesting example in this study. In practice, BSI also uses a power of attorney for *murabahah bil wakalah* financing schemes and requires a power of attorney to sell as part of the legal documents in the financing contract. Therefore, it is essential to conduct an in-depth academic study of this practice, both from the perspective of *fiqh muamalah* and Indonesian positive law, to determine the extent to which the use of a power of attorney to sell is in accordance with sharia principles and legal formalities.⁵

³ Dewan Syariah Nasional Majelis Ulama Indonesia, Fatwa DSN-MUI No. 04/DSN-MUI/IV/2000 tentang Murabahah dan Fatwa No. 10/DSN-MUI/IV/2000 tentang Wakalah, www.dsnmui.or.id

⁴ M. Syafi'i Antonio, *Bank Syariah: Dari Teori ke Praktik* (Jakarta: Gema Insani, 2001). pp. 145

⁵ Pasal 1792 Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek), Indonesia.

RESEARCH METHOD

This study uses an empirical juridical approach, a legal research that examines legal norms and their practical application in the field. This approach was chosen because the research focuses on analyzing the use of the Power of Attorney to Sell (SKM) as a requirement in *murabahah bil wakalah* financing at Bank Syariah Indonesia (BSI) Capem UIN Ar-Raniry Banda Aceh, so it is essential to examine both the normative legal basis and the implementation of Islamic banking practices in the field.

Normatively, this study traces the legal basis related to *murabahah*, *wakalah*, and SKM, which are sourced from legislation, DSN-MUI fatwas, Islamic legal doctrines, and relevant legal literature. Normative legal research examines the principles, doctrines, and applicable legal rules, which are then linked to the object of the study.⁶ Empirically, the research was conducted by examining the practice of *murabahah bil wakalah* financing at BSI Capem UIN Ar-Raniry Banda Aceh, specifically how SKM is used and positioned in financing agreements between banks and customers.

This type of research uses qualitative methods with descriptive analysis techniques. Qualitative research was chosen because it emphasizes the description of the legal reality as it is in the field, which is then linked to applicable legal norms.⁷ Primary data was obtained through interviews with officials or employees of BSI Capem UIN Ar-Raniry Banda Aceh who are directly involved in financing agreements, as well as customers who use the *murabahah bil wakalah* scheme. Meanwhile, secondary data was obtained through library research, which included a review of Islamic law literature, DSN-MUI fatwas, laws and regulations, journals, and relevant academic documents.

The data analysis process was carried out descriptively and analytically by processing and interpreting normative and empirical data, then drawing conclusions that answered the research questions. Through this method, the author attempts to comprehensively explain how SKM is practiced in *murabahah bil wakalah* financing at BSI Capem UIN Ar-Raniry Banda Aceh and its implications from the perspective of Islamic law and positive law.

⁶Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2006, pp. 35.

⁷ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2015). pp. 13

RESULTS AND DISCUSSION

A. Basic Concepts of *Murabahah Bil Wakalah* Financing

Murabahah is one of the sales contracts widely used in Islamic economic practices. The term comes from *ribh*, which means increase or profit, and is terminologically defined as a sale and purchase transaction with a cost price plus a mutually agreed profit margin. For example, according to Imam Shafi'i, the party ordering the goods is called *al-āmil bi asy-syirā*, where the practice of *murabahah* can be equated with conventional sales: the goods are delivered immediately while payment is deferred or paid in installments. Thus, *murabahah* is considered valid in Islamic law because it fulfills the pillars of sale and purchase while providing certainty for both parties.

One variation of *murabahah* is *murabahah bil wakalah*, which uses a representative mechanism in transactions. This model was created because, in practice, sellers often give customers the authority to purchase goods on behalf of Islamic financial institutions according to their needs. For example, the first contract entered into is a *wakalah* contract, where the customer is given the authority to select goods and submit them to the bank with proof of invoice; after that, the bank purchases the goods according to the specifications and then resells them with a profit margin added. Thus, this mechanism emphasizes that the bank's role is not limited to being a provider of funds, but is also related to real economic activities, even though its operational activities are still legally restricted to the financial sector.⁸

Landasan hukum Islam tentang *murabahah* diantaranya Quran Surat Al-Nisa ayat 29

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O you who believe, do not consume one another's wealth unjustly, except through trade by mutual consent among you. And do not kill yourselves. Indeed, Allah is Most Merciful to you."

In addition, the Hadith recorded by Ibn Majah from Suhaib Ar-Rumi r.a. asserts that the Prophet Muhammad (saws) Bersabda, "Tiga hal yang diyakini memancarkan berkah: pertukaran yang adil, *mudharabah* (*mudharabah*), dan mencampur gandum dan tepung demi kelezatan dapur, bukannya komersial." As

⁸ Windi Maulidina Lestari dan Aliyudin, "Pelaksanaan Akad *Murabahah Bil Wakalah* Pada Produk Pembiayaan Kredit Usaha Rakyat (Kur) Mikro Ib Di Bank Bri Syariah Kcp Majalaya," *UINSGD* 6, no. 2 (Juli 2019): 185, <https://journal.uinsgd.ac.id/index.php/mua/article/view/9648>.

stated in the second edition of the Kompilasi Hukum Islam, Article 20, Paragraph 19, *wakalah* is defined as the transfer of authority from one individual to another to execute specific actions on behalf of the authorizing party.

Adapun dalil tentang wakalah disebutkan dalam Qur'an surat an-Nisa ayat 35.

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُوا حَكَمًا مِّنْ أَهْلِهِ وَحَكَمًا مِّنْ أَهْلِهَا إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا

"And if you fear a dispute between them, then send an arbitrator from his family and an arbitrator from her family. If they both intend to make amends, Allah will grant them success."⁹

Sharia banking has various financing products based on Islamic law (*sharia*) principles, one of which is *Murabahah bil Wakalah* financing. The basic concept of *Murabahah bil Wakalah* is a financing scheme in which the bank, as the seller, appoints the customer as an agent to purchase the goods desired by the customer on behalf of the bank first, then the bank resells the goods to the customer at an agreed price plus a profit margin. With this model, the customer acts as the bank's agent in purchasing goods, becoming the object of the *Murabahah* contract.

The Power of Attorney Scheme (SKM) in *murabahah bil-wakalah* financing has obtained sharia legitimacy through DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 concerning *Murabahah* and DSN-MUI Fatwa No. 23/DSN-MUI/III/2002 concerning *Wakalah*.¹⁰ From a fiqh perspective, *wakalah* has pillars and conditions that must be fulfilled for the contract to be valid. The pillars of *wakalah* include four main elements, namely the principal (*al-Muwakkil*), the agent (*al-Wakil*), the object of the power of attorney (*al-Taukil*), and the statement of agreement (*ijab and kabul*). The requirements that the *muwakkil* and *wakil* must meet include being of sound mind (*'āqil*), having reached puberty, having the legal capacity to perform the represented contract, and being trustworthy and free from coercion. Meanwhile, the object of *wakalah* is a matter that is permissible and justified by sharia, can be used as the object of a contract, has a clear identity, and can be done by another person, such as sales and purchase transactions, leasing, debt transfer, profit-sharing agreements, as well as matters of divorce, marriage, and reconciliation.

The statement of agreement in *wakalah* can be made verbally, in writing, or through understandable gestures, with the principle of sincerity in giving and

⁹ Ibid.

¹⁰ Dewan Syariah Nasional MUI, Fatwa DSN-MUI No. 04/DSN-MUI/IV/2000 tentang *Murabahah* dan Fatwa No. 23/DSN-MUI/III/2002 tentang *Wakalah*, Majelis Ulama Indonesia

receiving, both in terms of the physical and the benefits of the object of the contract. However, a wakalah contract may terminate under certain conditions, such as the death or incapacity of one of the parties, the completion or termination of the work being represented, the revocation of authority by the principal, the resignation of the agent with the knowledge of the principal, or the expiration of the contract period.¹¹

Considering these provisions, it can be concluded that the use of SKM in *murabahah bil-wakalah* financing at Bank Syariah Indonesia is valid according to fiqh and permissible in Islam. This is because the scheme fulfills the pillars and requirements of wakalah, and does not conflict with sharia principles as long as the power of attorney is granted voluntarily by the customer, with complete understanding of the agreement's contents and the legal consequences it entails.

B. The Legal Position of Power of Attorney to Sell in *Murabahah Bil Wakalah* Contracts at Indonesian Sharia Banks Reviewed from the Perspective of Islamic Law and Positive Law

In *Murabahah bil Wakalah* financing at Bank Syariah Indonesia (BSI), the Power of Attorney to Sell (SKM) is positioned as a binding supplementary document with the power of execution over the financing object if the customer defaults. From the perspective of Indonesian positive law, the SKM is valid according to the provisions of Article 1792 of the Civil Code, which regulates the granting of power of attorney, and can be legally reinforced if it is outlined in a notarial deed. In fact, if the SKM states that the power of attorney is irrevocable until the repayment obligation is completed. The purpose of the "irrevocable" nature is to provide legal certainty for the bank so that it can sell the financed object (such as a house, vehicle, or other productive assets) without having to obtain renewed approval from the customer at the time of execution, because, in general, customers who default are no longer cooperative. Therefore, this type of SKM is usually reinforced by a notarial deed and becomes part of the legally binding financing documents. Thus, the bank still has a legal basis to execute the collateral if it does not conflict with the initial agreement. In national banking practice, SKM is often used as an alternative to litigation, as it is considered efficient and capable of accelerating the process of resolving non-performing loans without having to go through lengthy and costly court proceedings.¹²

¹¹ Sayyid Sabiq, *Fiqh as-Sunnah*, Jilid 3 (Beirut: Dar al-Fikr). pp 129

¹² Rachmadi Usman, *Hukum Perbankan Syariah* (Jakarta: Kencana, 2012). pp. 211

However, from the perspective of Islamic law, SKM's irrevocable nature has sparked debate. Islamic law, through the wakalah contract, stipulates that the power of attorney is voluntary, based on trust, and can be revoked at any time by the grantor, as long as it does not cause actual harm to other parties. Therefore, an SKM made irrevocable, especially with the consequence of unilateral execution by the bank, is considered contrary to the basic principles of the wakalah contract. Even in fiqh, any power of attorney used as coercion or to take property without consent can be considered invalid if it is not agreed upon fairly and openly. However, some contemporary ulama allow the use of SKM on the condition that there is sufficient consent and knowledge from the customer.

Example of SKM Use That Caused Legal and Fiqh Problems. In 2021, a case between a customer and a branch office of a Sharia Bank (name withheld) provided murabahah financing for purchasing a commercial vehicle. In the agreement, in addition to the murabahah and wakalah agreements, the customer also signed a Power of Attorney to Sell (SKM) that gave the bank the authority to sell the vehicle in the event of default. After 18 months, the customer experienced financial difficulties due to his business being affected by the pandemic. When he submitted a request for restructuring, the bank refused and immediately executed the SKM without going through a consultation process or issuing a warning first. The bank sold the customer's vehicle to a third party at a price far below the market value. The customer did not receive a copy of the sales report and was unaware of their remaining debt amount. Legal issues arose because the customer claimed they did not fully understand the contents and consequences of the SKM when signing it, and they felt the bank never explained the possibility of their assets being sold unilaterally.

From a positive law perspective, even though SKM is valid as a power of attorney agreement based on Article 1792 of the Civil Code, the elements of the agreement, free from coercion and disclosure of information, became the basis for customers' lawsuits against banks. He considered that there was an imbalance of information that violated contractual principles and consumer rights. Meanwhile, from the perspective of muamalah fiqh, the implementation of SKM, which is irrevocable and carried out unilaterally without allowing customers to raise objections or engage in deliberation, contradicts the basic principles of wakalah contracts, namely that they can be revoked at any time and are based on trust (amanah). In addition, the execution that harmed customers was also considered contrary to maqashid al-syari'ah, especially the principles of al-'adl (justice) and raf' al-dharar (avoiding harm). This case was then resolved through mediation at a Sharia financial dispute resolution institution, and the bank ultimately paid

compensation for part of the vehicle's value for not following the proper notification procedure. However, this case is an essential example of how the opaque implementation of SKM can lead to legal conflicts and violations of Sharia values in Sharia banking practices.

In this case, practice in the field shows that customers often do not fully understand the legal consequences of the SKM they sign. However, regarding sharia, the SKM can still be applied with the conditions of transparency, fairness, and not harming either party, and being used unilaterally without prior consultation. From these two legal perspectives, SKM does have a valid and strong legal position in civil law, but requires caution in its application from a Sharia perspective. If not implemented with the principles of fairness and clarity, SKM can actually become a weak point in sharia financing contracts, which should be based on *maslahat* (public interest) and mutual assistance.¹³

Based on its practices, Bank Syariah Indonesia implements *Murabahah bil Wakalah* financing while continuing to prioritize the principles of prudence and compliance with sharia law and national regulations. This scheme is commonly used to fund consumptive and productive goods, such as purchasing motor vehicles, household appliances, or even raw materials for production.

The general steps in implementing *Murabahah bil Wakalah* are as follows:

1. The customer submits a financing application to the bank.
2. The bank approves the application and issues a wakalah power of attorney to the customer to purchase goods on behalf of the bank.
3. The customer makes a purchase and submits proof of purchase to the bank.
4. The bank and the customer enter into a Murabahah agreement, whereby the bank sells the purchased goods at the cost price plus an agreed profit margin.
5. The customer makes installment payments according to the predetermined period

The bank remains responsible for supervising the customer's purchase to prevent misuse of the contract. For this reason, transaction monitoring and documentation procedures are essential in risk management.¹⁴

The power of attorney is attached immediately after signing the wakalah agreement, not when the murabahah agreement is in effect. The SKM is given after the customer receives the power of attorney as the bank's representative to purchase goods, then transfers the power of attorney back to the bank so that the bank can sell the goods in the event of default. Therefore, administratively, the SKM is signed

¹³ Wahbah Az-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, Jilid 5 (Damaskus: Dar al-Fikr, 1989). pp. 3920

¹⁴ Muhammad, *Fiqh Muamalah* (Jakarta: Prenadamedia Group, 2020). pp. 215

after the *wakalah* agreement, but is still part of a series of financing agreements. The SKM does not stand alone, but is part of a risk mitigation document designed to be executed when the customer does not fulfill their obligations per the main contract. The bank cannot manage the SKM without the customer's power of attorney, so it must be sequential after the *wakalah* contract. The attachment of the power of attorney letter for this sale is a preliminary requirement that the customer must provide. Still, it is attached after the *wakalah* agreement, not before the *wakalah* deal is made.

C. The Role and Function of Power of Attorney in *Murabahah Bil Wakalah* Financing

A power of attorney is essentially an agreement between the principal and the agent, whereby the principal grants the agent the authority to perform specific actions on behalf of the principal. Provisions regarding granting power of attorney are regulated in Book III Chapter XVI of the Civil Code (KUHPdata), from Article 1792 to Article 1819. Meanwhile, the term "power of attorney" or *volmacht* is not regulated separately in the Civil Code or other regulations, but is considered part of the concept of granting power of attorney. Article 1792 of the Civil Code states, "A power of attorney is an agreement whereby a person grants authority to another person, who accepts it, to conduct business on behalf of the principal." From this provision, it can be seen that there are several essential elements in the granting of power of attorney, namely: (1) the existence of an agreement between the parties, (2) the granting of authority to the attorney-in-fact, and (3) the actions taken by the attorney-in-fact must be on behalf of the principal.

According to Subekti, a power of attorney can be interpreted as a form of agreement, whereby a principal grants authority to another person to represent them in carrying out a legal action. A legal action here refers to any act with legal consequences for the principal, such as creating rights, obligations, or terminating a particular legal relationship. In daily practice, there are two forms of power of attorney, namely private power of attorney and authentic power of attorney. A private power of attorney is a document made directly by the principal and the attorney-in-fact without the intervention of a public official or notary. Meanwhile, an authentic power of attorney is a document made officially before or by a public official/notary, based on the request of the parties concerned.¹⁵

¹⁵ Alfi Setyawan, "Tinjauan Yuridis Penggunaan Surat Kuasa Jual Terhadap Penjualan Objek Hak Tanggungan Dalam Penyelesaian Kredit Macet," *Jurnal Cahaya keadilan* 4, no. 1 (2016): 56, <http://download.garuda.kemdikbud.go.id/article.php?article=886208&val=11935&title=TINJAUAN%20YURIDIS%20PENGUNAAN%20SURAT%20KUASA%20JUAL%20TERHADAP%20PENJ>

A power of attorney is divided into two types: a general power of attorney and an extraordinary power of attorney. A general power of attorney is a broad grant of authority, usually covering all of the principal's interests in property and personal affairs. This authority is not limited to specific actions, but is comprehensive. However, based on the provisions of Article 1796 of the Civil Code, a general power of attorney only applies to management actions (*dadén van beheer*). It does not cover acts that involve the transfer of rights or binding obligations. At the same time, an extraordinary power of attorney grants authority limited to a specific matter or legal action clearly stated in the power of attorney. Its validity is regulated in Article 1795 of the Civil Code, which states that a power of attorney can be granted generally or specifically. In practice, specific power of attorney is more commonly used because it provides greater legal certainty.¹⁶ In practice at Bank Syariah Indonesia, SKM falls into the category of specific power of attorney because the scope of SKM is limited, clear object of authority, and the explicit purpose of the letter, which does not give the bank comprehensive authority to manage all customer interests, but is limited to the sale of specific financing objects, always mentioning the object specifically (such as the type of goods, land certificate number, vehicle frame number, or other assets used as collateral) and made to pay off the remaining financing if the customer cannot fulfill their obligations. Therefore, the power of attorney only applies to one legal matter, not other issues.

A power of attorney to sell generally contains several essential elements that form the basis of its validity. First, this letter must include the identities of the parties, both the grantor and the grantee, consisting of their full names, addresses, and clear legal identities. Second, there must be a detailed description of the object of the power of attorney, namely, the goods or assets authorized to be sold, such as houses, vehicles, or other forms of property. Third, the scope of authority granted to the grantee must also be specified, including actions such as determining potential buyers, setting prices, signing deeds of sale, receiving proceeds from sales, and paying off the remaining financing on behalf of the grantor. Fourth, the power of attorney is usually *irrevocable* until all of the principal's obligations, especially to the bank, have been fully settled. However, according to civil law, the power of attorney can be revoked anytime. The fifth element is the parties' signatures on the stamp duty, accompanied by the date of creation, which serves as authentic evidence of approval. Sixth, the power of attorney also contains the signatures of witnesses to reinforce the legal validity of the document.

UALAN%20OBJEK%20HAK%20TANGGUNGAN%20DALAM%20PENYELESAIAN%20KREDIT%20MACET.

¹⁶ Kitab Undang-Undang Hukum Perdata (KUHPerdata), Pasal 1795-1796.

In addition to these elements, there are also additional provisions that are usually included in the articles, including: Article 1 concerning the object of the power of attorney, which specifies the assets to be sold; Article 2 relating to the scope of the attorney-in-fact's authority in the sale process; Article 3 concerning the purpose of the power of attorney, which is to sell the financed object if the principal defaults; Article 4 regarding the *irrevocable* nature of the power of attorney, which remains valid even if the principal dies, goes bankrupt, or is placed under guardianship; and Article 5 as a closing clause, which confirms that the power of attorney is made in a state of full consciousness and without coercion, to be used as intended.

Based on the above description, a power of attorney to sell can be defined as the authority granted by the owner of goods to another party as the attorney-in-fact to sell specific goods, including carrying out activities for the sale of those goods, with the attorney-in-fact acting on behalf of the principal as the legal owner of the goods. A power of attorney to sell is considered an agreement, meaning that as long as the provisions of Article 1320 of the Civil Code are fulfilled, the power of attorney to sell is valid as an agreement between the parties, whether in the form of a private deed or an authentic deed.

The primary function of SKM is as a form of security for financing. If the customer defaults on payment, the bank can sell the collateral without going through the courts. This makes SKM an effective tool in the efficient resolution of non-performing loans. SKM allows banks to take direct action on existing collateral, per the power of attorney signed by the customer at the time of the agreement. On the other hand, the role of SKM is not without legal and normative debate. In Indonesian civil law, a power of attorney can be granted in writing and is not contradictory if used based on an agreement between the parties. However, from an Islamic law perspective, *wakalah* contracts are voluntary and can be revoked anytime. Therefore, the existence of an irrevocable SKM is considered to deviate from the basic principles of the *wakalah* contract itself.¹⁷

Thus, the SKM serves as a means of protecting the rights of the bank, but at the same time raises questions about fairness and protection for customers, especially if the contents and consequences of the SKM are not adequately explained to the customer before the contract takes place. The bank needs to explain to customers how this *murabahah bil wakalah* contract works and why the SKM is also necessary in this contract, so there will be no pros and cons between customers and the bank when a default occurs. However, it should be noted that the SKM cannot

¹⁷ Pasal 1792 KUH Perdata tentang Pemberian Kuasa

be used unilaterally and must be explained in detail to customers, even though it is legally valid under civil law.¹⁸

D. Study at Bank Syariah Indonesia KCP Banda Aceh UIN Ar-Raniry

Bank Syariah Indonesia (BSI) implements a Power of Attorney to Sell (SKM) as part of the supporting documents in murabahah bil wakalah financing. This SKM is prepared and signed by the customer when the contract is signed, not when a dispute arises. The purpose is to give the bank full authority if the customer cannot later pay off their obligations (default). BSI usually drafts the SKM as a notarial deed to strengthen its legality. In the SKM document, the bank is given the authority to sell the financed goods (such as houses, vehicles, or business equipment) without obtaining renewed approval from the customer. This power is declared valid until all customer obligations are paid off, and cannot be revoked unilaterally by the customer. Through the application of SKM, BSI can sell the financed object directly in the event of a bad debt, without waiting for legal proceedings through the courts. From the bank's perspective, this is considered a form of efficiency and protection against financing risks. However, from a Sharia perspective, this is debatable. This is because in muamalah fiqh, wakalah contracts should be voluntary and revocable at any time. Therefore, the use of SKM, which is "irrevocable," raises questions regarding sharia compliance and fairness to customers, especially if customers do not fully understand the consequences when signing the document.¹⁹

Generally, banks will issue a warning letter before selling the assets of defaulting customers, even though banks hold a power of attorney to sell, legally allowing them to sell assets without further approval from customers. However, Bank Syariah Indonesia KCP Banda Aceh UIN Ar-Raniry continues to prioritize the principles of deliberation and notification to customers, issuing warnings before taking enforcement action. **A R - R A N I R Y**

The initial step banks take in dealing with customers in arrears is to send warning letters (SP1, SP2, and SP3) in stages. This action is necessary as a form of official notification and an effort to allow customers to settle their financing obligations. For example, the warning letter usually explains the amount of arrears, the time period given, and an offer of amicable settlement to prevent the problem from escalating. In this way, the bank shows good faith in resolving the issue, while giving customers room to rectify their obligations before further action is taken.

¹⁸ Wahbah Az-Zuhaili, *al-Fiqh al-Islami wa Adillatuhu*, Jilid 5 (Damaskus: Dar al-Fikr, 1989). pp. 3920

¹⁹ Fatwa DSN-MUI No. 05/DSN-MUI/IV/2000

If the customer responds to the warning letter, the bank will pursue a peaceful solution through deliberation or negotiation. This approach aligns with the principle of *akad islah* recommended in Islamic law, where amicable settlements are preferred over more severe legal measures. For example, the bank may offer restructuring options such as rescheduling payments, extending the term, or partial repayment of obligations in accordance with the customer's ability. With this step, the bank maintains its relationship with the customer and promotes the values of justice and benefit in Islamic banking practices.

If the customer does not respond or show good faith, the bank will execute a Power of Attorney to Sell (SKM) on the assets used as collateral. This is done because the bank has the legal right to sell the assets to pay off the customer's obligations as agreed in the *murabahah bil wakalah* contract. In practice, the proceeds from the sale of assets are first allocated to repay the remaining principal of the financing, along with the profit margin to which the bank is entitled; then deducted from administrative and operational costs, such as notary, appraisal, advertising, auction, or asset maintenance; and the remainder is returned to the customer. If the proceeds from the sale are insufficient, the bank has the right to collect the shortfall in accordance with the agreement or to pursue further restructuring efforts. Thus, the SKM execution mechanism upholds the principle of Islamic justice, namely that the bank is only entitled to its share without taking more. It is obliged to provide a written report to the customer regarding the sale details and the use of the proceeds.

Although legally, banks can immediately sell customer assets, in terms of Sharia ethics, they are still required to notify customers and follow a fair process. This is carried out based on "*Al-'Adl fi al-muamalah*".²⁰

Types of financing that use SKM at Bank Syariah Indonesia include: a) Murabahah bil wakalah financing; b) Home ownership financing (mortgages); c) Motor vehicle financing; d) Multipurpose financing (cash financing); e) Micro or MSME financing. Overall, this financing is designed to meet customer needs while upholding sharia values such as fairness, transparency, and the prohibition of usury. The contracts used are tailored to the financing object, such as murabahah for purchasing goods, mudharabah and musyarakah for productive businesses, and ijarah for business leases. In all types of financing, banks, especially Bank Syariah Indonesia (BSI), generally stipulate a Power of Attorney to Sell (SKM) as part of their risk management strategy.

CONCLUSION

²⁰ POJK No. 31/POJK.05/2014 tentang Produk Pembiayaan Syariah dan prinsip kehati-hatian (prudential principle) dalam eksekusi jaminan non-litigasi.

Using a Power of Attorney to Sell (SKM) in Murabahah bil Wakalah contracts at Bank Syariah Indonesia KCP Banda Aceh UIN Ar-Raniry is part of a financing security mechanism commonly used in modern Islamic banking practices. The SKM is a form of risk mitigation designed to enable the bank to execute the financing object if the customer defaults without going through a lengthy litigation process. This aligns with the efficiency and asset protection principles adopted in the national civil law system and banking practices regulated by the OJK.

However, from an Islamic law perspective, an irrevocable SKM raises controversy, as it contradicts the fundamental nature of a wakalah contract, which should be voluntary and revocable at any time. Therefore, Bank Syariah Indonesia KCP Banda Aceh UIN Ar-Raniry implements SKM by ensuring that customers give their informed consent and by providing education and explanations on the legal consequences of the documents they sign. The researchers concluded that the implementation of SKM in Murabahah Bil Wakalah contracts has been carried out per Sharia principles and applicable legal provisions. The deliberation, transparency, and fairness approaches must be prioritized so that the implementation of SKM remains within the corridor of maqashid sharia. It should be emphasized that using SKM in murabahah bil wakalah contracts is not merely a matter of administrative compliance, but also a matter of ethics and compliance with deeper Sharia values. As an Islamic financial institution, Bank Syariah Indonesia has a great responsibility to comply with legal regulations and reflect Islamic values in all of its financing practices.

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