



## Islamic Law on Peace Agreements in Murabahah Dispute Resolution: An Analysis in Banyumas Religious Court

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### ABSTRACT:

**Abstract:** This study aims to determine the basis of the nature of the peace deed in the settlement of *murabahah* disputes in the Banyumas Religious Court. The main problem to be revealed in this study is how the review of Islamic engagement law on the peace deed in the settlement of *murabahah* disputes in the Banyumas Religious Court. The research method used by the author is included in literature law research. This literature research focuses on the scope of legal conception, legal rules, and legal principles, not up to human behavior. The results of this study show that the Parties to the peace deed have indirectly applied some of the provisions of the engagement based on the Islamic law of engagement, both from the provisions of the principle or principle, the provisions of the pillars, and the provisions of the terms and some things are not applied under these provisions. So the law of the peace deed is binding and can be implemented as the provisions of Islamic law by both parties. This means that the Banyumas Religious Court has implemented the positive rule of law well, but on the other hand has implemented the legal provisions that apply to Islam. This peace deed becomes the basic agreement document of the parties to execute or execute the agreement that has been decided by the judge. Thus, the parties must abide by it in order for the benefit of this agreement to be achieved.

## Introduction

Muamalah problems have been arranged in such a way that in practice they do not cause harm to either party (Syaikhu, 2020). To minimize the occurrence of losses, Islamic law has regulated the basic principles that must be fulfilled when

fulfilling the muamalah contract, including the principle of worship, the principle of honesty or trust, the principle that the mutually agreed agreement is binding, the principle of freedom of contract and the principle of justice (Sa'adah Yuliana, 2017).

There are several activities included in the muamalah group, including debts, borrowing, selling, buying, unions, wages, rents, pawns, guarantees, dependents, and so on (Harima Surya Siregar & Koko Khoerudin, 2019). Of the many discussions about muamalah, more occur in the covenant. In Islamic engagement law, an agreement is referred to as a contract. The legal definition of Islamic engagement itself is the act of two or more parties who promise to do something or not do something, then the parties have bound themselves to the agreement based on the provisions of Islamic law (Faizin, 2020). On that basis, the contract in Islam must be by the Islamic law of engagement. One form of contract in Islam is muamalah which occurs in buying and selling transactions with a *murabahah* pattern.

The financing of *murabahah* contracts in Islamic financial institutions is greater in percentage if we compare it with *murabahah* contracts or other profit-sharing contracts. This dominance proves that the financing has many advantages. First, buyer certainty, second profit certainty, and third, this contract is the easiest to use and apply by Islamic banks themselves. In addition, the high financing of *murabahah* occurs because this contract has a smaller risk (Lukmanul Hakim & Amelia Anwar, 2017). The dominance of financing with *murabahah* contracts makes disputes over the contract also more than other contracts.

One of the Sharia economic cases in the Banyumas Religious Court regarding the dispute over the default of the *murabahah* financing contract registered on Monday, November 2, 2020, is in the form of a lawsuit filed by the Remedial and Legal Officer of PT Bank Pembiayaan Rakyat Syariah (BPRS) Bina Amanah Satria Purwokerto, hereinafter referred to as Plaintiff I and Plaintiff II. In the case of lawsuit number 1696/Pdt.G/2020/PA.Bms. that Defendant has defaulted on Plaintiff because the Defendants cannot carry out their obligations as stated in the financing contract *murabahah* Notariil No. 30, dated March 29, 2018, which was later updated in an amendment to contract No. 202/PRBH/II/2019, dated February 28, 2019. In this case, Defendant I and Defendant II still have remaining debts in PT Bank Pembiayaan Rakyat Syariah (BPRS) Bina Amanah

Satria Purwokerto. The plaintiff has made collection efforts to the defendant, but the defendant has no good faith to fulfill the obligation to pay the remaining debt.

In this case, Judge Mediator Dra. Hj. Suhaimi, M.H, Mediator from the Banyumas Religious Court has succeeded in reconciling the parties in ending or resolving the dispute contained in the lawsuit letter, with a peaceful agreement through a mediation process as stipulated in Article 27 Paragraph (4) and Article 28 Paragraph (5) of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, with a written peace agreement on January 4, 2021, after an agreement was made, the Banyumas Religious Court made a peace deed as a result of mediation and handed down a decision on case No. 1696/Pdt.G/2020/PA. Bms.

The Islamic view of seeing a covenant is different from the positive hukum view which is independent of religious values. In positive law, a contract or agreement is considered valid if it occurs voluntarily from both contracting parties, although it must be within the limits of propriety. In contrast to Islamic law, where Islamic law still emphasizes religious values in every agreement. According to the view of Islamic law, everyone's freedom to make agreements and terms must not deviate from the provisions of religious teachings, even if both parties to the agreement have agreed consensually or voluntarily (Syafwatun Nida, 2015).

Based on the explanation above, the author is interested in analyzing the review of Islamic engagement law on the peace deed in the settlement of *murabahah* disputes in the Banyumas Religious Court. As explained in positive law, an agreement is considered valid if it occurs voluntarily from both contracting parties, although it must be within the limits of propriety. In contrast to Islamic law. With that, the author wants to research and look for the legal basis used by both parties in agreeing on the settlement of *murabahah* disputes which can refer to the concept of Islamic engagement law.

This literature review aims to obtain an overview related to the problems studied with several previous studies that can be used as references and considerations in this study, namely the journal written by Rekha Agustriani Siregar and Suhadirman with the title Deed of Peace Decision Number 1/Pdt.G.S/2019/PA.Ptk at the Pontianak Religious Court Review of the Compilation of Sharia Economic Law, which discusses how the legal construction in the decision of case Number 1 / Pdt.G.S / 2019 / PA. Ptk, as well as the implications

for the concept of peace in the Compilation of Sharia Economic Law (KHES). This shows that the judge did not refer directly to the Shari'a arguments for deciding the case of this peace deed. As a result, the judge's decision on the peace deed does not show any significant difference from the judge's decision in the District Court. The judge did not use the Compilation of Sharia Economic Law (KHES) as one of the bases for his consideration in explaining the meaning and mechanism of peace in Islam (Rekha Agustriani Siregar & Suhadirman, 2022). In this case, it is the same as the author who will discuss the peace deed, but the difference is that the author focuses on the legal analysis of Islamic engagement on peace deed number 1696/Pdt.G/2020/PA.Bms on the settlement of *murabahah* disputes at the Banyumas Religious Court.

## Methods

The type of research used is included in literature law research. This literature research focuses on the scope of legal conception, legal rules, and legal principles, not up to human behavior. This research makes norms as objects in its study, what is meant by norms here is all legal norms that regulate human behavior. Some legal norms that can be the object of literature legal research, include basic norms, laws and regulations, regulations of State institutions, regulations of legal institutions, court decisions, official decisions, and all types of legal documents that are officially issued and have legal force (Muhaimin, 2020). Researchers use Peace Deed Number 1696/Pdt.G/2020/PA.Bms. as the object of research. Based on the problems in this study, researchers used two data collection methods, namely literature studies and document studies, besides that the author also used interview modes as validation of the documents used. Data analysis used in normative legal research or literature is qualitative analysis, namely data analysis that presents data properly and correctly into regular, non-overlapping, logical, and effective sentences so that it is easy to understand the results of the analysis (Ishaq, 2017).

## Results

Based on the deliberations of the Panel of Judges of the Banyumas Religious Court on Thursday, January 14, 2021 AD / 1 Jumadil Akhir 1442 Hijriyah, by Akhmad Kholil Irfan, S.Ag., S.H., M.H., as the Chief Judge of the Panel, as well

as Drs. Faisol Chadid and Rusli, S.H.I., M.H., respectively as Member Judges, and Sudarsono S.H., as Substitute Registrar. Where this case was filed by PT Bank Pembiayaan Rakyat Syariah (BPRS) Bina Amanah Satria, located at Jalan Pramuka No 124 Purwokerto, Banyumas Regency. As the Plaintiff. In this case, it is represented by Plaintiffs I and II. In their respective positions as Remedial and Legal Officer of PT BPRS Amanah Satria. Furthermore, Defendant I, age 50 years, Islam, self-employed work, address RT 05 RW 05, Pliken Village, Kembaran District, Banyumas Regency, and Defendant II, age 58 years, Islam, work as a housekeeper, address RT 05 RW 05, Pliken Village, Kembaran District, Banyumas Regency. In this case, the defendants gave special power of attorney to RN, S.E., S.H., M.H., Advocate / Lawyer whose office is located in the Citra Gran Commercial Area, Blok R15, Cibubu, Bekasi. Deciding this case with decision Number 1696/Pdt.G/2020/PA.Bms. as follows:

- a. Punishing the Plaintiff, Defendant I and Defendant II to comply with the agreed Peace Agreement;
- b. Declaring that the confiscation of bail that has been placed by the Registrar/Bailiff of the Banyumas Religious Court contained in the Minutes of Confiscation Number 1696/Pdt.G/2020/PA.Bms. dated November 26, 2020 is invalid and worthless;
- c. Ordering the Registrar/Bailiff of the Banyumas Religious Court to lift the confiscation of bail that has been placed by the Banyumas Religious Court as stated in the Minutes of Confiscation Number 1696/Pdt.G/2020/PA.Bms. dated November 26, 2020;
- d. Sentence the Plaintiff to pay the cost of the case in the amount of RP 2,955,000.00 (two million nine hundred and fifty-five thousand).

The content of the Peace Agreement which explains that the Plaintiff and the Accused Party are willing to end the dispute by peaceful means through mediation with Mediator Dra. Hj. Suhaimi, M.H. in writing on January 4, 2021 as follows:

- a. That the Plaintiff/First Party explained that Defendants I and II/ Second Party still have remaining debts in PT Bank Pembiayaan Rakyat Syariah (BPRS) Amanah Satria, with details; the remaining principal of the loan is IDR 264,021,192 (two hundred and sixty-four million twenty-one thousand ninety-two rupiah), the remaining margin is IDR

- 178,131,973'- (one hundred and seventy-eight million one thousand one hundred and seventy-three rupiah), a total of IDR 442. 153. 000'- (four hundred and forty-two million one hundred and fifty-three thousand rupiah);
- b. That Defendants I and II/the second party request a policy to the Plaintiff/first party to be given repayment relief in the form of a reduction in Margin and commit to completing its obligations within a period of 2 years by selling assets belonging to Defendants I and II/the second party;
  - c. That the Plaintiff/first party has agreed to provide relief in accordance with the request of Defendants I and II/the second party to complete their obligations within a period of 2 (two) years from December 2020 to December 2022 so that the amount of remaining debt agreed upon, namely; the remaining principal financing of IDR 264,021,192 (two hundred and sixty-four million twenty-one thousand ninety-two rupiah), the remaining margin of IDR 20. 978,808,- (twenty million nine hundred and seventy-eight thousand eight hundred and eight rupiah), with a total of IDR 285,000,000 (two hundred and eighty-five million rupiah);
  - d. That during the period of point 3 Defendants I and II/the second party are serious about selling their assets and promise that if before the maturity they already have funds or sustenance, it will be immediately deposited to the Plaintiff/first party;
  - e. That if up to the specified deadline Defendants I and II/the second party do not implement the contents of this peace agreement (default), then this case will be continued in accordance with the applicable law by submitting and complying with the provisions of Article 1131 of the Civil Code (Pengadilan Agama Banyumas, 2021).

## Discussions

### Understanding the Law of the Islamic Alliance

Perikatan in Islam linguistically comes from Arabic, namely *ar-rabt* which means rope or bond, *al-aqdatu* which means connection, and *al'ahdu* which means promise. According to the term contract is a rope that connects or

binds someone with another person (Nurseha et al., 2016). In contemporary Islamic legal terms, the word *iltizam* is used as a word to refer to an engagement, while the term contract is used to refer to a covenant (Faizin, 2020).

In the field of muamalah, the law of Islamic engagement is a law that regulates the behavior of people in the implementation of their economic relations, especially in terms of agreements. This Islamic alliance law is derived from the Qur'an, Hadith, and *ar-ra'yu* (ijtihad) which regulates the relationship between two or more people who bind themselves to the contract of an object that is lawful to be the object of the transaction. In Islamic engagement, the distinctive characteristic is that of its religious-transcendental nature, the meaning of this trait in an Islamic alliance not only highlights aspects of civil affairs but there is an element of obedience in carrying out religion in an engagement (Nurseha et al., 2016). Thus, it can be said that Islamic engagement law has a wider scope than the subject matter of engagement law in Western civil engagements.

#### Basics of the Islamic Alliance

According to Nanda the covenant or engagement has principles that must be fulfilled when the engagement is carried out, these principles are:

a) *Al-Hurriyah* (freedom)

This principle becomes the basic principle in an Islamic alliance, which means that the parties are free to agree. This freedom includes freedom in determining the mechanism of the agreement, the type of agreement or its object, and the freedom to determine the parties.

b) *Al-Musawah* (equation)

This principle emphasizes that the position of the parties must be equal or equal so that when determining terms or conditions both have the same opinion.

c) *Al-Adalah* (justice)

This principle in an engagement emphasizes that any agreement must bring benefits to both parties and must not cause harm to either party.

d) *Ar-Rida* (willingness)

The willingness in question is the consent of both parties without any element of coercion, intimidation, or fraud.

- e) *As-Siddq* (honesty)  
Everyone is required to speak or behave honestly, including in making agreements. Thus, for any dishonesty that occurs in an agreement, the aggrieved party has the right to cancel the agreement.
- f) *Al-Kitabah* (Written)  
Every outcome of an agreement is recommended to be made in writing so that when a dispute arises it will be important evidence (Nanda Amalia, 2013).

### Pillars and Conditions of Islamic Alliance

In an engagement, the contract is declared valid or binding, if certain elements have been agreed upon together with certain criteria. This provision is what we often know as getting along well (Moch. Fauzi, 2011). The elements that are principal in an alliance, which is:

- a) *Aqidain*, two or more parties who establish themselves in an agreement.
- b) *Mahallul 'aqdi* or *ma'qud 'alaih*, is an object that exists in the engagement.
- c) *Maudul 'aqdi*, The purpose of an engagement or contract.
- d) *Ijab*, which is the word *sigatul 'aqd* spoke by the first party. *Qabul*, which is the word *sigatul 'and* spoken by the second party as the recipient of the contract.

The conditions of the Islamic alliance, which will occur and are valid according to law if the conditions have been met, are as follows:

- a) *Aqid* (Legal Subjects)  
Both parties to the engagement must be capable, both individually and in groups/organizations. An engagement will not be valid if it is done by a child, a lunatic, and so on who according to the law are not yet competent to perform the engagement.
- b) *Mahallul 'aqdi* (Legal Objects)  
The object of the contract in the Islamic alliance is divided into several requirements, including, the object of the engagement must be present at the time of the contract and the contract will end when the object has been handed over to the recipient, the object in the Islamic alliance must be justified by Islamic law, meaning that in the Islamic alliance must not use objects that are haram, both haram in substance and

how to obtain it, the object in the Islamic alliance must be clear and recognizable and the object can be handed over at the time of the contract happen (Joko Sriwidodo & Kristiawanto, 2021).

### The Right to Vote in the Islamic Alliance

In Islamic alliances, the right to vote is termed *khiyar*. *Khiyar* has the right to choose one or both parties who will enter into an engagement in continuing or not continuing an engagement in a certain way. Islamic jurists distinguish *khiyar* into two, as follows:

a) *Khiyar* Based on Both Sides

*Khiyar* based on both parties who make the engagement is divided into two, namely:

b) *Khiyar* Syarat

*Khiyar syarat* is the right granted to parties to choose between continuing or canceling an agreement that has been agreed for a certain period. *This Khiyar* only applies to engagements that bind the two, such as sale and purchase agreements, leases, and others.

c) *Khiyar* Ta'yin

*Khiyar Ta'yin* has the right to choose the buyer in determining the goods that will be the object of engagement. *Khiyar Ta'yin* only applies when the object is only one of many goods of different quality and price.

d) *Khiyar* Based on *Shara'*

*Khiyar* Based on *Shara'*, itself is divided into three, namely:

e) *Khiyar* 'Aib

*Khiyar 'aib*, has the right to cancel or execute the agreement for both parties if there is a defect in the object of the engagement and the defect is not known to the owner.

f) *Khiyar* Ru'yah

*Khiyar ru'yah* is the right to choose for the buyer to declare valid or can cancel the sale of an item that he does not see in the contract.

g) *Khiyar* Majelis

*Khiyar majelis* is the right to choose for both parties who make the engagement to continue or not in the engagement as long as both are still in the contract assembly (Ria Rahma Wati, 2018).

## Things That Can Damage and End an Alliance in Islam

The engagement can be damaged due to the non-fulfillment of the pillars and legal conditions of the engagement, the engagement must also be based on the voluntariness of the parties to the pledge. Islamic jurists agree that an engagement can be broken and invalid or can be canceled if there are any of the following:

- a) Coercion, an engagement made without the voluntariness of the parties concerned, then the engagement is considered to have been made by force.
- b) Errors in the object of engagement, the error referred to in this case is the fault of the party who made an engagement about the object of engagement, both objects in terms of type and nature.
- c) Fraud or deception, what is meant by fraud is an attempt by a party to hide defects or discrepancies in the agreed object and explain the object is not reality so that it can harm one of the parties.

In Islamic law the termination of an engagement is caused by:

- d) The expiration of the validity period of an engagement, this has been agreed and confirmed at the beginning when the engagement is made about the validity and expiration of an engagement.
- e) Canceled by the contracting party, this is due to a violation of the agreement made by one of the parties, or caused by an error or fraud from one of the parties.
- f) If One of the contracting parties dies, this situation becomes the reason for the end of an engagement when the agreement to do something. However, when the agreement is in terms of doing something, for example, a debt agreement, it usually does not become the reason for the termination of an agreement because there are still other parties who can fulfill their obligations, usually the heirs of the party concerned (Nanda Amalia, 2013).

## The Understanding of Akad *Murabahah*

Linguistically, *murabahah* from *masdar* that is *ribh* or *ar-ribh* has the meaning of profit, profit, and benefit. Derived from the word *rabiha* which means lucky, *ribha* which means to be profitable, and *murabaha* which means profit .

*Murabahah a* is a sale and purchase between the seller and the buyer, where the two agree on the selling price of the goods sold, the selling price in question is the cost price, shipping costs, and profits that will be obtained by the seller. In another sense, *murabahah* is a sale and purchase contract by stating the price, receipt, and profit of goods mutually (Umi Kalsum & Eka Rizky Saputra, 2016) agreed upon by the seller and buyer and the return is made in installments or cash according to the agreement (Tri Setiady, 2014). The characteristic of this contract is that the seller is obliged to provide an explanation of the purchase price of a product and mention the amount of profit added to the cost to the buyer (Bagya Agung Prabowo, 2019).

Based on the Compilation of Sharia Economic Law (KHES), *Murabahah* is mutual benefit financing between property owners or investors and parties in need through sale and purchase with conditions, if there has been an agreement on the *murabahah* financing contract in determining the principal price and profits, it will be fixed and binding. So that the selling price of products/goods must not change.

### Legal Basis of Akad *Murabahah*

*Murabahah* is a form of buying and selling. Most scholars argue that the legal basis of *murabahah* is the same as the legal basis of buying and selling in general. The legal basis that can be used in the application of this *murabahah* sale and purchase contract is as follows:

- a) Q.S. Al-Baqarah (2): 275:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

...While Allah has legalized buying and selling and banning usury. (Q.S. Al-Baqarah: 275) (Tim penterjemah al-Qur'an Departemen Agama RI, 2010).

In this verse, Allah Almighty affirms that buying and selling is halal or permissible and *riba* is haram. That *riba* has an element of injustice while buying and selling does not, *riba* is often interpreted as additional money on capital obtained in a way prohibited by Shara'. Based on this provision that *riba* is prohibited by *syara*, (Sujian Suretno, 2018) while buying and selling, including buying and selling *murabahah*, gets legality from sharia

law and may be used in financing practices at Islamic banks because it is not included in buying and selling that contains elements of ribawi (Djuwaini Dimyauddin, 2015).

b) Q.S. Al-Baqarah (2): 280:

وَإِنْ كَانَ ذُو عُسْرَةٍ فَنَظِرَةٌ إِلَىٰ مَيْسَرَةٍ ۗ وَأَنْ تَصَدَّقُوا خَيْرٌ لَّكُمْ ۖ إِنْ كُنْتُمْ تَعْمَلُونَ

And if (the debtor) is in trouble, then give a grace period until he has spaciousness. And if you give alms, it is better for you, if you know. (Q.S. Al-Baqarah: 280) (Tim penterjemah al-Qur'an Departemen Agama RI, 2010).

This verse explains the policy on the issue of receivables and legal protection for debtors who are in a condition that have not been able to pay debts to be given a delay in payment, whereas Allah also gives rules to debtors to carry them out according to the Shari'a, by avoiding fraud and other prohibited acts (Achmad Fahrudin, 2020).

c) Q.S. An-Nisa (4): 29:

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

O believers! Do not eat one another's property in an unrighteous way, except in consensual trade among you. And do not kill yourself. Truly God is merciful to you. (Q.S. An-Nisa: 29) (Tim penterjemah al-Qur'an Departemen Agama RI, 2010).

In this verse, Allah Almighty forbids His faithful servants to eat property among His servants by way of vanity. Vaguely eating wealth is not only eating wealth by usury. And God allows business on a consensual basis, which means that they must respect each other. In business, there must be a willingness between both parties and each does it consciously. At the end of this verse Allah Almighty forbids killing himself, meaning that in various contexts of buying and selling a trader will not take as much profit, nor does the buyer bargain for goods until the limit of rationality for the profit taken by the trader disappears. Therefore, this balance in buying and selling is needed proportionally and fairly so that both parties benefit each other

(Sujian Suretno, 2018).

- d) Hadith of the Prophet narrated by Al-Baihaqi, Ibn Majah, and Rated *Sahih* by Ibn Hibban: 2185:

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ قَالَ:  
 إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ، (رواه البيهقي وابن ماجه وصححه ابن حبان)

It is from Abu Sa'id Al-Khudri that the Prophet (peace be upon him) said, "Indeed, buying and selling must be done consensually." (H.R. Al-Baihaqi, Ibn Majah and Rated *Sahih* by Ibn Hibban: 2185) (Ibnu Majah Abu Abdillah Muhammad Ibn Yazid al-Qazwaini, n.d.).

In this hadith, the Prophet Muhammad (peace be upon him) gave a prerequisite to the sale and purchase contract that there must be willingness on each party when making transactions. All provisions in the *murabahah* sale and purchase contract, such as determining the cost of goods sold, profits to be obtained, payment methods, and other agreed provisions, must have the willingness of both parties and cannot be determined by either party alone (Nurhayati, 2017).

- e) Fikih Rules:

الأصل في المعاملات الإباحة إلا أن يدل دليل على تحريمها

"The basic law of muamalat is mubah, unless evidence is found that prohibits it." (Tim penterjemah al-Qur'an Departemen Agama RI, 2010)

Rules have a very broad meaning in human life. They have the right to do whatever they want in life, be it work, family, education, and so on, as long as there is no reason to forbid or forbid it. No one has the right to prohibit or prevent without the proposition of sharia which regulates the prohibition.

### Terms of Transaction *Murabahah*

In the Compilation of Sharia Economic Law, *murabah* is mutually beneficial financing carried out by the owner of capital/property with parties in need through buying and selling transactions with the following conditions, as follows:

- a) The seller in this case must provide a cost of part or all of the agreed price of the goods.
  - b) The seller must use personal identity to buy goods needed by the buyer and the purchase must be by sharia principles, one of which is without riba.
  - c) The seller describes the cost of goods and costs required to the buyer truthfully.
  - d) The buyer must pay the agreed price of the goods with a predetermined time in agreement in the financing *murabah*.
  - e) The seller is allowed to enter into a special agreement with the buyer to prevent the misuse of the contract.
  - f) If the seller will represent the buyer to buy goods from a third party, the contract must be made after the goods have become the property of the seller.
  - g) If the seller accepts the buyer's request for an item, the seller must first purchase the ordered item and the buyer must complete a valid agreement with the seller.
  - h) The seller is allowed to request an advance payment to the buyer when signing the initial agreement in this *murabah* sale.
  - i) If the buyer refuses to purchase the goods, then the seller's real cost must be paid from the down payment.
  - j) If the down payment from the buyer is less than the loss to be borne by the seller, then the seller can claim compensation for the remaining losses to the buyer.
  - k) In the payment of this *murabah a* contract can be done in two ways, namely in cash and installments within a period agreed by both parties.
  - l) When the buyer experiences a decrease in the ability to pay installments, then he is entitled to be given a dry payment in the form of conversion by making a new contract in completing obligations.
- a. The Law of Islamic Alliance against Peace Deed No. 1696/Pdt.G/2020/PA. Bms.

In this analysis, the author will examine how the Islamic Alliance Law views the peace agreement carried out by PT. BPRS Amanah Sattria as the Plaintiff

with RN, S.E., S.H., M.H. as the legal representative of the Defendants as stated in peace deed No. 1696/Pdt.G/2020/PA. Bms.

In the field of muamalah, the Islamic law of engagement regulates human behavior in carrying out its economic relations, especially in terms of agreements. The law of Islamic engagement is derived from the Qur'an, Hadith, and *ar-ra'yu* (ijtihad) which regulates the relationship between two or more people who bind themselves to the contract of an object or act that is lawful to be the object of the transaction. In Islamic engagement, the distinctive feature is that of its religious-transcendental nature, the meaning of this trait in an Islamic alliance not only highlights aspects of civil affairs, but there is an element of obedience in carrying out religion in an alliance (Nurseha et al., 2016).

The Islamic view of seeing a covenant is different from the secular view of positive law which is independent of religious values. In positive law, a contract or agreement is considered valid if it occurs voluntarily from both contracting parties, although it must be within the limits of propriety. In contrast to Islamic law, where Islamic law still emphasizes religious values in every agreement. According to the view of Islamic law, everyone's freedom to make agreements and terms must not deviate from the provisions of religious teachings, even if both parties to the agreement have agreed consensually or voluntarily.

The covenant in Islamic law is an alliance established with *ijab* and *ka-bul* based on the provisions of *sharia* ' which has legal consequences on its object. In Islamic law, a treaty must reflect justice to protect the parties to the agreement. The agreement must emphasize the principle of fairness and real balance in containing the rights and obligations that must be fulfilled by the party to the agreement (Syafwatun Nida, 2015).

The peace agreement in the peace deed in the decision of the Banyumas Religious Court Number 1696 / Pdt.G / 2020 / PA.Bms. is the result of a mediation process in the Court conducted by PT. BPRS Amanah Satriia as the Attorney/First Party with RN, S.E., S.H., M.H. as the legal representative of the Defendants/Second Party. The agreement explains that the parties have agreed to all the contents of the written agreement that has been formulated in the mediation process. In the content of the agreement, it is explained that the parties agree to the payment of the remaining debt

from the previous *murabah* financing contract by the second party to the first party. With this peace agreement, the parties are obliged to abide by the agreement. In Islam, such an agreement is included in *al-'aqd al-lazim*, where in practice if all the pillars and conditions have been fulfilled, then the contract is fully binding which results in the parties not being able to terminate the agreement without the consent of the other party, in this contract binding both parties so that both have equal legal force over the agreement. In addition, such an agreement is also included in *'aqd al-mu'awadah*, this agreement occurs where there is a reciprocal achievement so that the parties receive something in return for the achievement given (Anwar, 2010).

In the peace agreement above, it has been mentioned that the object agreed is the remaining debt, in other words, the agreement is included in the peace agreement over objects (money). Such a peace agreement provides achievements to both as in the peace deed in the decision of the Banyumas Religious Court Number 1696 / Pdt.G / 2020 / PA.Bms. that the first party provides relief for the remaining debt while the second party carries out the payment of the remaining debt within 2 years by selling its assets or when it already has sustenance will be immediately paid to the first party.

An alliance in Islam must of course be based on the principles of sharia, therefore Islamic civil law has determined several principles more commonly known as principles. This principle in the Islamic alliance can affect the execution of an agreement made by the party who has an interest. If the principle of engagement cannot be fulfilled in its implementation, it can destroy an agreement, it can even result in the invalidity of an agreement that has been agreed. There are at least five forms of principles used in an engagement, including Principles *al-hurriyah*, *al-musawah*, *al-'adalah*, *ar-rida* a *al-kitabah*. In addition to the five foundations, plus two more bases, which are the base *Ilahiah* and *as-siddiq*. This principle is necessary because every human behavior is inseparable from the provisions of Allah SWT (Ria Rahma Wati, 2018).

The basic form of *al-hurriyah* in the Islamic covenant is also called *mabda' hurriyah at-ta'aqud*. This principle frees the parties to agree, free of the object of the agreement, free to determine with whom to agree, and free to determine the resolution of disputes if in the future a dispute occurs

(Muhammad Sjaiful, 2015). About the peace deed in the decision above, the first party and the second party have made a peace agreement using a mediation process in the Court, then after the peace agreement is reached the parties are given freedom in determining the contents of the peace agreement to be strengthened in the Judge's decision so that it will become a peace deed (peace agreement) with permanent legal force or only used as an ordinary agreement. However, this agreement is not entirely exempt, some things cannot be contested.

In determining the object of the agreement in the peace deed, the second party cannot ask the first party for changes in the object of the agreement, because the peace agreement is an agreement based on a dispute that occurred before, namely a default dispute made by the second party against the first party in the form of remaining debt in the form of unpaid money by the *murabahah* financing agreement in the Notarial Deed number. 202/PRBH/II/2019. Thus the object of the agreement in the peace treaty is the right and freedom of the first party to change or not. The second example, based on the provisions in the Islamic agreement mentioned above, is that if the parties in a future dispute occur the parties are free to determine the resolution of the dispute, but one of the contents of the peace agreement states that if until the agreed time limit the second party / Defendant does not implement the peace agreement, then the case will continue based on the provisions in article 1131 Civil Code, in essence the article states that everything in the form of property of the debtor becomes security for the debt for his engagement or agreement. The article states that if the second party violates the agreement, the first party can immediately execute the debt guarantee through the Court.

Thus, according to the author, in the peace agreement based on the basic view of freedom of conflict in Islam, not all the contents of the agreement are based on the freedom of both parties in determining the content of the agreement. Therefore, the principle of freedom of contract in Islamic agreements established based on freedom of contract is not based on absolute freedom, but freedom in Islamic agreements based on provisions and principles and sharia values which aim to ensure the attachment of the parties in obeying the contents of the agreement.

The form of the principle of *al-musawah*, this principle emphasizes that the position of the parties must be balanced or equal, meaning that the parties have the same opinion in determining the terms or conditions for the achievement of an agreement (Nanda Amalia, 2013). About the peace deed in the decision above in terms of determining the payment of the remaining debt, because later it will have an effect in determining the time of payment and the nominal to be paid. In the event of determining the payment of the remaining debt, the second party requests relief for repayment to the first party because due to the inability of the second party, then the first party agrees on the condition that the remaining debt must have been repaid within a period of 2 (two) years. Thus the parties get their respective rights in determining the agreement. So that this agreement brings benefits to both parties and does not bring harm to either party, this is also in line with the principle of Islamic agreement, namely the principle of *al-'is* (justice).

The basic form of *ar-rida* in the Islamic covenant is also called *mabda' ar-rada'iyah*, that what is meant by a willingness in the agreement is the agreement of both parties without any element of coercion, threat, or deception (Nanda Amalia, 2013). As in the rule of Islamic law which says that "in principle, an agreement is an agreement of the parties and the legal effect is what they establish through the agreement", this rule asserts that the agreement is essentially a mutual agreement, so that when an agreement has been reached, then the agreement is created (Anwar, 2010). Based on the above peace deed verdict both parties have been willing to end the dispute using peace and for that have made an agreement based on the peace agreement, so that both are punished for obeying the peace agreement they have agreed to.

The basic form of *al-kitabah*, recommends that every agreement should be made in writing so that the contract is clear and becomes proof of the agreement that has been agreed by the parties, so that when there is a dispute this evidence is a very important position (Joko Sriwidodo & Kristiawanto, 2021). The agreement made by the first and second parties in the above decision is an agreement based on a peace agreement in writing on January 4, 2021, in the form of a peace deed.

The form of the principle *as-siddiq*, explains that an agreement must be based on honesty and truth, this principle emphasizes in the agreement

there must be no lies and fraud on any basis, because this true value can affect the legality of the contract, if this principle is not fulfilled then this contract will also be damaged. Then the party who is aggrieved due to dishonesty committed by one of the parties can cancel the contract (Emanuel Raja Damaitu, 2014). About the peace deed above, in practice, the parties to the peace agreement have given honest information, for example, the first party's statement about the remaining debt from the second party. If the second party confirms the remaining debt, it can be seen from the content of the agreement that the second party will try in good faith to immediately pay off the debt within a period of 2 (two) years or before maturity if it already has funds or sustenance will be immediately deposited to the first party.

The form of the divine principle asserts that every human action cannot be separated from the provisions of Allah SWT, as well as the practice of covenants. As a result of the application of this principle in the agreement, the parties will not agree with heart, because what has been done will get a reward from Allah Almighty (Emanuel Raja Damaitu, 2014). About the peace deed above, the parties always pay attention to the limitations of an agreement and its pillars and conditions so that in determining the content of the agreement it remains based on that principle, although not entirely because this peace deed is made with positive legal provisions of a general nature. One agreement that reflects the value of the divine principle is that when the first party gives a dry repayment of the remaining debt to the second party, it is highly recommended in Islam because one of the acts of mutual help is good.

Then an engagement in Islamic law is the formation of a contract that is valid and declared valid or binding if certain elements that have been agreed upon together with certain criteria are fulfilled (Moch. Fauzi, 2011). These provisions are what we often know as pillars and contract terms. Definition Pillars are the elements that make up something, so that something is realized because of the existence of these elements. In the concept of Islamic law, the elements that make up something are called pillars. Including contracts in Islam, contracts are formed because of the pillars that form them. According to contemporary Islamic jurists, there are four pillars that make up the contract, namely: (1) *al-'aqidain*, (2) *sigatul-'aqd*, (3) *Mahallul*

'*aqdi* and (4) *Maudul-'aqdi* (Anwar, 2010). And The conditions are traits that must exist in each harmony, the contract conditions are divided into four types, namely: (1) *syurutul-in'iqad* (2) *syurutu as-sihhah* (3) *syurutan-nafaz* and (4) *syartul-luzum* (Anwar, 2010).. This provision can form a peace agreement on the peace deed in the Banyums Religious Court decision number 1696/Pdt.G/2020/PA.Bms. so that this agreement applies and binds the parties, namely PT BPRS Amanah Satria/the first party as the Plaintiff and the Customer/second party as the Defendant.

The provisions of the *syurutul-in'iqad*, explain that in the formation of a contract, it is necessary to have the conditions of the contract so that the pillars can form an agreement. Without these conditions, the pillars of the contract cannot form an agreement (Anwar, 2010). More detailed provisions will be explained below:

- 1) The provisions of *al-'aqidain*, explain that both parties who make a contract (engagement) must be capable, both individually and with groups/institutions. An engagement will not be valid if it is performed by a child, a lunatic, and so on who according to Islamic law are not yet capable of performing the engagement (Joko Sriwidodo & Kristiawanto, 2021). In Islamic law, a person is considered legally capable when his words and deeds can be accounted for. That skill is inherent in a person since he enters the age of Taiz (Abd. Aziz & Bahrudin, 2019), it's just that at that age a person cannot act perfectly (Anwar, 2010). A peace agreement between PT. BPRS Amanah Satria, represented by their respective officials as Remedial and Legal Officer of the Islamic bank, as the First Party with Brother A aged 49 years, and B aged 57 years in this case they have given special power of attorney to RN, S.E., S.H., M.H., as Advocates / Lawyers in conducting peace agreements hereinafter referred to as the Second Party. In this provision, the parties have qualified to agree as stated in the peace deed because judging from each age they have fulfilled, besides that the parties are also legally capable or can act and be subject to law, both Islamic law and general positive law, this is proven because each party has worked in an office or law-based environment. In addition, about *al-'aqidain* some things need to be considered, in this case related to *wakalah* (representation) (Dewi et al., 2022). Those who give their power of attorney to their

representatives or legal representatives, Islam it is permissible as the hadith of the Prophet from Bisr Ibn Said as-Sa'idi said, "Umar (r) once hired me to withdraw zakat, after the work was finished Umar gave me wages, so I protested." I work this only for Allah," Umar replied, "just take what is given to you. Indeed, I was employed by the Prophet (peace be upon him) and he rewarded me."

- 2) The provisions of *sigatul-'aqd* make it clear that in performing an agreement, *ijab* and *kabul* must be clearly and unequivocally conveyed by the parties. For *ijab* and *kabul* to have legal consequences, between *ijab* and *kabul* there must be a conformity of will to give birth to the word agreement, meaning that what is stated in *kabul* must be the same as what has been stated at the time of *ijab*. The conformity of will can be achieved in the same assembly, in other words, *ijab* and *kabul* are said to be valid if there is unity of the contract assembly. In Islamic engagement law the statement of will can be expressed through the declaration of will orally, in writing, in messenger, gesture, and secretly (Afdawaiza, 2008). This provision, basically is not much different from what the researcher explained above regarding the provisions of *ijab* and *kabul* in the implementation of the mediation process which in essence *Ijab* and *kabul* in the agreement occurred directly at the contract assembly, where both parties agreed on the peace agreement directly in writing before the Banyumas Religious Court Mediator on the same day, namely on January 4, 2021, So the peace deed was born.
- 3) The provisions of *mahallul 'aqdi*, explain that in the Islamic law of engagement, the object of the contract is positioned as something because the object of the contract is valid and has legal consequences. The object of the contract in the Islamic law of engagement can be a thing, a benefit of a thing, or an act. At least the object of the contract meets three conditions, namely:
  - a) The object of the contract must exist at the time the contract is executed and the contract will end when the object has been handed over to the recipient, meaning that the object of the contract must be able to be enjoyed or taken advantage of. Suppose the object of the contract is in the form of goods or objects that occur in a contract of sale and purchase or lease, or the object of the contract is in the form of deeds,

then the act must be able/possible to be carried out (Joko Sriwidodo & Kristiawanto, 2021).

- b) The object of a certain contract can be determined, meaning that the object of this contract can be known by the contracting party so as not to cause disputes. For example, in the object of the contract in the form of objects, it can be seen from when the contract is carried out whether the object of the contract is in the Assembly of the contract or not, or the object of the contract is not in the Assembly but can be described with very clear information. The object of the contract in the form of deeds must also be certain and determinable, meaning that the object of the contract of deeds must be explained in such a way as to eliminate vagueness (Urbanus Uma Leu, 2014) .
- c) The object of the akad can be surrendered when the object of the akad object, the purpose of the object, and the properties of the object do not contradict the terms of the transaction (Anwar, 2010).

In the content of the peace agreement between the first party and the second party in the peace deed above, what they agreed was an agreement to pay off the remaining debt resulting from the *murabahah* financing agreement that was not implemented by the second party. According to the researcher, the object of the contract they transacted was the object of the contract in the form of money in the form of debt, wherein the content of the agreement was clear that the second party agreed to immediately pay off the remaining debt amounting to RP 285,000,000 (two hundred eighty-five million rupiahs) by selling the assets it owned.

- 4) The provisions of *maudul-'aqdi* emphasize that any contract made must not contradict Islamic law. For example, the contract of *ba'I al-inah*, in simple terms the contract of *ba'I al-inah* is interpreted as a form of trade in which the *financier* sells his assets to the buyer at a certain price that the buyer will pay in the future. After that, the buyer immediately resells the same asset to the *financier* at a cash price lower than the previously agreed future price. In this practice, there is really no sale and purchase contract, because the assets sold by the financier return to him, so that there is no real transfer of property to the asset, instead there is a loan of money with more returns. So it is concluded that the purpose of such a contract is forbidden by sharia because it prescribes *riba* (Moh, 2021). The agreement between the first

party and the second party in the peace deed above is *al-iltizam bid-dain*, which is a debt agreement. It is affirmed in the content of the agreement that the second party will pay off the remaining debt to the first party. This agreement is carried out so that the debt is immediately repaid and the default dispute that occurs between the first and second parties can be resolved by peaceful means. The provisions of *syurutus-sihhah*, explain that the pillars and conditions of a contract still need to be perfected. It should be emphasized that the fulfillment of the pillars and conditions of the contract is not necessarily said to be valid, even though a contract has been formed and has a *shari'a* juridical. The validity of a contract if the harmony and conditions for the formation of the contract can meet the requirements for the validity of the contract. The pillars and conditions of the contract that need to be perfected, namely the statement of will that must be achieved without coercion, the object of the contract submitted does not cause harm (*darar*), certain objects do not contain *garage* elements and the object transacted must be free from fasid conditions and the contract on burden must be free from usury practices (Anwar, 2010). Thus, if a contract or object causes losses, contains vagueness of the object of the contract, and causes usury practices, then the contract is invalid because the contract is facid or damaged. In the peace contract in the peace deed above, between the first and second parties to carry out *ijab* and *kabul* without any coercion, it is stated by the panel of judges that both parties are willing to end the dispute by entering into a peace agreement, thus indicating the willingness of both parties to implement the contract. The object of the contract handed over or promised is an object in the form of money in the form of debt the object is handed over for mutual interest, and the object handed over is the remaining debt in the peace deed above which must be fulfilled by the second party so as not to cause losses to the first party. According to the author based on this provision, in the peace deed, there are no elements of *garar*, *darar*, and even *riba* which destroy the contract.

The provisions regarding *syurutun-nafaz* explain that the validity of a contract may not necessarily be enforceable due to its legal effect, thus to be enforceable its legal effect, the contract that has been declared valid must meet the conditions for the enactment of legal consequences, namely the existence of perfect authority over the object and authority over the legal action taken.

Perfect authority over the object of the contract is fulfilled by the parties having ownership of the object concerned and in that object is not related to the rights of others, while the authority to act legally if the parties have reached the ability to act legally (Anwar, 2010). In terms of authority over legal actions, both parties who make a peace agreement on the deed are capable as the author explained above. Then the object that the parties make a contract in the peace deed above is money in the form of debt. Looking at the history of this peace agreement, this agreement occurred because of a dispute over default on the *murabahah* financing contract, so the author can conclude that the money used as the object of the contract in this agreement is money in the form of debt belonging to PT BPRS Amanah Satria due to the *murabahah* financing contract before the dispute occurred.

The provisions regarding *syartul-luzum*, explain that the essence of the contract that has fulfilled the pillars of the contract, the conditions for the formation of the contract, the validity of the contract, and the validity of the legal consequences automatically the contract has been valid and can be enforced by the parties, however, this contract has been binding on both parties who agree with it the law may not be if one party withdraws his agreement without the consent of the other party (Anwar, 2010). With the provisions of this condition associated with the deed of peace in the judgment of the data, the deed of peace with this provision has one principle, namely the contract binds the first party and the second party. Therefore, the first and second parties must comply with this agreement, namely implementing the agreement as stated in the decision of the Banyumas Religious Court Number 1696 / Pdt.G / 2020 / PA.Bms.

## Conclusions

From the analysis that the author has done regarding the peace agreement strengthened by the Judge into a peace deed in the decision of the Banyumas Religious Court Number 1696/Pdt.G/2020/PA.Bms. between PT BPRS Amanah Satria as the first Party and RN, S.E., S.H., M.H. as the second Party's legal representative. It can be concluded that the Parties to the peace deed have indirectly applied some of the provisions of the engagement based on the Islamic law of engagement, either from the provisions of the principle or principle, the provisions of the pillars and the provisions of the terms and some things are not applied under these provisions. In the provision of freedom of contract of

the parties in determining the object of the peace agreement, the second party cannot request changes in the object of the agreement to the first party, because this peace agreement is an agreement based on disputes that occurred before. Thus, the object of the agreement in the peace agreement is the rights and freedoms of the first party that cannot be intervened by the second party, unless there is a certain thing. Then in determining the settlement of the dispute if the parties in the future dispute occurs again the parties should be free to choose the way of resolution, but one of the contents of the peace agreement states that the settlement of the case will continue based on the provisions in article 1131 of the Civil Code. The mask of the article is the right of execution of assets or assets owned by the first party against the second party. However, the article is essentially aimed at providing justice and legal guarantees to the first party so that the second party does not default again.

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