

## **ASPECTS OF SHARIA LEGALMAQASHID SYARIAHAND QAWAIDUL FIQHIIYAHIN PROPERTY FINANCE IN SHARIA HOUSING CASES**

**Meliana Murti Prakastiwi<sup>1</sup>**

<sup>1</sup>Faculty of Law, Universitas Muhammadiyah Surakarta, Indonesia

Email : mulianamurti715@gmail.com<sup>1</sup>

### ***Abstract***

*In meeting the need for housing, low-income people find it very difficult to own a house with cash. The development product was originally a conventional product, namely KPR, but in sharia banking the system used is profit sharing/margin so it is without usury. The focus of this paper discusses how maqashid sharia and qawaidul fiqhiiyah review sharia mortgages which are currently one of the favorite products in sharia banking. The author uses a normative juridical method, namely research law using secondary data sources. Normative, because this research will examine secondary data starting from a review of maqashid sharia and qawaidul fiqhiiyah in the field of sharia banking, especially sharia mortgages. Operationally, normative juridical research is carried out by library research facilities. The results of this research are that sharia mortgages are permitted because they are part of the implementation of sharia objectives or maqashid sharia in terms of protecting family and property. Likewise, it is also assessed that home ownership is a basic need for every human being, that with the existence of sharia mortgages it can provide benefits for Muslims in general, according to qawaidul fiqhiiyah contracts in sharia mortgages are permissible by referring to several fiqh rules.*

*Keywords: Property Indent; Sharia KPR; Maqashid Sharia.*

### **INTRODUCTION**

A house is a building that functions as a residence and residence for family development. Housing is a group of houses that function as a residential or residential environment which is equipped with environmental infrastructure and facilities. Home and housing are places where the socialization process is carried out when a person is introduced to the norms, customs and customs that apply in society. Therefore, houses and housing are considered basic needs and are very important issues for everyone.

Housing needs always increase along with population growth. Based on a study by Real Estate Indonesia (REI), the average need for new housing in Indonesia is 800,000 units every year. REI can only fulfill around 200,000 units and the government around 100,000 units. As of November 2014, the unmet housing need (backlog) in Indonesia was 15 million units (Rosyid Aziz, 2015:4).

KPR is one of the programs launched by financial institutions in Indonesia to make it easier for customers to own a house using a credit system so that customers can get a house that suits their wishes in the short term.(Muhammad, Ridho;, 2018)In Indonesian banking practice, the KPR system is divided into two types, namely: using conventional banks and sharia banks, apart from using banks, there are also non-bank financial institutions, both conventional and sharia institutions. Where in conventional banking practice or non-bank

financial institutions only use one transaction usually called interest-bearing credit, whereas in sharia banking or non-bank financial institutions use several transaction contracts provided by sharia banking to customers such as murābahah, ijārah, wādi' contracts. ah, salām, Istiṣnā, etc.

Sharia mortgages through sharia banking usually use a murabahah (sale and purchase) contract where the bank acts as the seller and the customer as the buyer. Another contract after this contract is the musyarakah mutanaqisah (MMQ) contract. This contract is a derivative between a partnership (musyarakah) and a lease or ijarah. Then the customer pays installments to the bank which consists of two components, namely rent and house purchase. And over time, these installment payments result in a large proportion of customer ownership and a smaller proportion of bank ownership, so that the house ultimately becomes the customer's property.

As the development progresses, KPR products are not only issued by banks or sharia financial institutions (LKS) but are also adopted by sharia developers without banks. Sharia mortgages without banks are basically loans where home buyers do not use banks in practice so that home buyers directly pay installments to the developer. The sharia mortgage process without a bank is different from a regular mortgage using a bank. It is believed that sharia mortgages without banks can make things easier for customers because customers are not required to deal with administrative matters which are often burdensome. Sharia mortgages without banks are considered to have high flexibility because they have various features as follows; no BI checking, no salary slip or SK required so it is suitable for non-formal entrepreneurs such as traders. Where in its application there are no confiscations, no fines, and no usury.(Firmasnyah, Egi Arvian, 2017)

In this modern era, Muslims are faced with social changes which have given rise to a number of serious problems related to Islamic law. On the other hand, the methods developed by the mujtahids to answer these problems appear to be unsatisfactory. In research on legal reform in the Islamic world, it was concluded that the methods generally developed by mujtahids in dealing with legal issues still relied on a disaggregated approach by exploiting the principles of takhayyurdan talfiq. It has become a very urgent need for Muslim mujtahids today to formulate a systematic methodology that has solid Islamic roots if they want to produce law that is comprehensive and develops consistently.

The MUI (Indonesian Ulema Council) fatwa regarding home mortgages needs to be taken into consideration when deciding on several types of home purchase credit, such as

bank Home Ownership Credit (KPR) products, subsidized KPR, and direct KPR with developers, which will be used to purchase housing. This is because house prices are expensive and buyers' limited ability means that selling activities and house buying techniques are often carried out using a credit system. Although in the case of Sharia KPR there are many fatwas that speak to it. In the end, all sharia banking transactions are expected to achieve one of the concepts of general goals to be achieved in Islamic law (maqashid sharia) and can provide *maslahah* to each customer. So rational knowledge is a necessity.

## **RESEARCH METHODOLOGY**

In this research the author uses a normative juridical method, namely legal research that uses secondary data sources. Normative, because this research will examine secondary data starting from a review of sharia *maqashid* in the field of Sharia banking, especially in Sharia KPR. Operationally, normative juridical research is carried out using library research. Research data generally uses secondary data obtained through library data. Library data, also known as literature study (library research), is library research, which is carried out by searching for data from books, journals, statutory regulations and other scientific writings. In this research, sharia *maqashid* will be examined with reference to verses from the Koran, Hadith and the books of the jurists. The data collection technique in this research uses library research or document study as secondary data, namely analyzing relevant scientific theoretical reading sources so that they can be used as a basis for research analysis to solve the problems raised. This research uses analytical techniques with qualitative methods through a research method that produces analytical descriptive data, because it does not use formulas and numbers using deductive thinking methods.

## **RESULTS AND DISCUSSION**

Sharia KPR is sharia-based home ownership financing using several contracts, namely sale and purchase with certainty of profit (*murābahah*), sale and purchase with terms and construction (*istishna*), lease ends and continues to own (*ijarah mutahia bit tamlik*) and joint venture reduced with rent (*musyarakah mutanaqishah* ).(Ifham, Ahmad;, 2017)This is one of the Sharia Bank financing products that finances customer needs in terms of purchasing residential (consumptive) housing, both new and used. Customers can pay in installments in installments that will not change during the agreement period.

KPR or Home Ownership Credit is a type of credit service provided by banks/institutions to customers who want a special loan to meet their needs for building a house or renovating a house. KPR itself emerged because the need to own a house was getting higher and higher without being balanced by adequate purchasing power by the community.(Suhardjono, Kuncoro;, 2002).

In carrying out mortgage financing, the following conditions must be met:(Suhardjono;, 2003)Minimum age: prospective borrower is 21 years old and when the credit is paid off, the maximum age is 55 years old. Submit a photocopy of personal identity. Submit a 4x6 photo of husband and wife. For company employees (individuals), attach the original Decree for the

Appointment of the First Employee and the Last Decree, salary slip/certificate salary from the company, statement letter/recommendation from the company, For employees of agencies/companies collaborating with banks (collectively) attach a decree as permanent employees, a statement that they are not enjoying loans from other banks, conditions regarding the debtor's willingness if their retirement is accelerated or terminated (PHK) or stop working at the employee's own request, then the pension money, severance pay or other recipients they receive must first be used to pay off their credit at the bank (must be stated in the credit agreement), a certificate from the agency/company (leadership) regarding the ability to make salary cuts for employees. employees (debtors) to then be paid to the bank as credit installments until they are paid off in an orderly manner, and so on, Submitting an offer letter from the developer regarding the house, land and building area, price and down payment that has been paid or cost budget plan, Submitting a contractor's offer letter (for construction house or renovation), Submitting a seller's offer letter regarding the selling price of the house for the purchase of a non-new home from a non- developer seller. Apart from the conditions for Sharia KPR financing, there are also the following provisions: The sale and purchase is valid if harmony has been implemented and there is a hadith laatabi maalaysa 'indak, namely that each party must confirm the detailed specifications of the house being bought and sold. Sharia banks must carry out surveys and even appraisals, and not carelessly buy houses from developers who are not credible. Sharia banks and developers must also carry out sales and purchase agreements in a legally convincing manner, at least from the perspective of buying and selling terms. From a legal perspective, the party who will be greatly disadvantaged if There has been no return of name or handover of keys to the buyer.

In buying and selling transactions, it is usually the buyer who will be worried if the keys and/or name change are not handed over.(Salah, Ashhawi; Almuslih, Abdullah;, 2001)

Murabahah Contract Murābahah is part of a transactional sale and purchase contract, in fiqh it is called bay' al-murābahah, while Imam asy Syafi'i calls a type of transaction bay' al-murābahah al-amirbissyira. Murābahah financing is the sale and purchase of goods at the original price with additional profits agreed between the bank and Sabah. In murabahah, the seller states the purchase price of the goods to the buyer, then he requires a certain amount of profit.(Harrisman;, 2015)In principle, murabahah is buying and selling, when there is a request from the customer, the bank first buys the order according to the customer's request, then the bank sells it to the customer at the original price and then adds the profit margin that has been mutually agreed upon. It is further explained that what differentiates murābahah from other types of buying and selling is that in murābahah the seller must clearly explain to the buyer how much the wholesale price is and how much profit it adds.(Widodo, Sugeng;, 2014)Murābahah is a type of buying and selling, where the seller states the cost of the goods he bought, and then adds the profit. The method of payment in murābahah can be in cash or deferred depending on the parties involved. Zuhayli (2003: 354–355) emphasizes that murābahah is a "cost- plus sale", where the buyer must know the purchase price of the goods, and this information is a fundamental condition for the validity of the murābahah. Apart from that, it is also emphasized that the seller already has the goods to be bought and sold, and if the seller does not have the goods, then the murābahah sale and purchase will be invalid (cancelled).

Sale and purchase agreement with terms and construction (istishna) According to the Fatwa of the National Sharia Council No: 06/DSNMUI/IV/2000, what is meant by an Istiṣnā contract is a sale and purchase in the form of an order for the manufacture of certain goods agreed upon between the orderer (buyer, mustani') and the seller ( maker, ṣani').(Sam, Ichsam;, 2017)The concept of Istiṣnā' referred to in KPR Syariah is the Istiṣnā'sale and purchase order agreement. In this contract there are laws and provisions that must be obeyed by both parties. In order for the Istiṣnā' contract to be valid, it must fulfill the requirements and harmony, Istiṣnā's special conditions regarding the seller and buyer are:

a) Explains the goods made, their type, grade and nature because the goods are the goods being sold (object of the contract). This condition is important to eliminate the element of jahālah which can cancel the contract. b) These goods must be goods that are

commonly traded between humans, such as making houses, tables, chairs, cupboards and so on. c) There are no provisions regarding the delivery time for the goods ordered. If the time for delivery of the goods is determined, the contract automatically changes to a salam contract so that all the laws of the salam contract apply, according to Imam Abu Hanifah's opinion. Meanwhile, Imam Abu Yusuf and Muhammad, this condition is not necessary. According to them, *Istiṣnā'* is legally valid, whether the time is specified or not because according to custom, this timing can be used in the *Istiṣnā'* contract. (Aisiyah, Binti Nur, 2015)

The lease agreement ends with ownership (*ijarah Muntahiyah Bit Tamlik*) The *Ijarah Muntahiyah Bitamlik* contract is a rental contract which ends with the transfer of ownership from the lessor to the lessee either by way of a gift or a promise to carry out a sale and purchase at the end of the lease period. (Procedures for Implementing Subsidized Kpr and Subsidized Sharia Kpr as well as Subsidized Sarusuna Kpr and Subsidized Sarusuna Syariah Kpr.pdf, 2020) The *Ijarah Muntahiyah Bittamlik* Agreement, hereinafter referred to as the *IMBT* Agreement, is an agreement to provide funds in order to transfer the right to use or benefit from an item or service based on a rental transaction with the option to transfer ownership of the item. *Ijarah Muntahiyah bit Tamlik (IMBT)* is a type of combination between a sale and purchase contract and a lease, or more precisely, a rental contract which ends with ownership of the goods in the hands of the lessee.

Qawaidul Fiqhiyyah's review of Sharia KPR Financing, today's life has experienced very rapid progress in the fields of science and technology, at the same time the demands for life's needs and their fulfillment are also developing in various forms. Banking is one form of progress that offers a variety of transactions that require certainty based on Islamic law about whether they are permitted or not. (Al Kattani, Abdul Hayyie; , et al., 2011) Likewise, food, beverage, medicine and cosmetic products also require halal legal provisions. The process of legal determination of the above issues is carried out by the National Sharia Council (DSN) for cases of Sharia banking and Sharia financial institutions as well as the Indonesian Ulema Council (MUI) through LP PM MUI reviewing and researching cases of food, drinks, medicines and cosmetics, which uses fiqhiyah rules, apart from referring to the Koran and hadith of course. This can be seen in the DSN fawa decision and MUI fatwa decision. Rasulullah Muhammad SAW is recorded in history as having worked as a trader and exemplified how to conduct economic transactions or conduct good muamalah, there are also

many books of fiqh and works of classical scholars which are very abundant and broadly discuss Islamic economic concepts and knowledge. To help Muslims in discussing a theme of Islamic economic law, for example, studying the rules of fiqhiyyah is a must to gain ease in knowing contemporary economic laws that do not have sharīh texts (definitive arguments) in the Qur'an or hadith. Likewise, it makes it easier for us to master the problems of furū'iyah (branches) which continue to develop and are countless in just a short time and in an easy way, namely through a concise and concise expression in the form of fiqhiyyah rules. (Hidayatullah, Syarid;, 2013)

## CONCLUSION

If you look at the various aspects above, it can be said that Sharia KPR is permissible as long as the provisions of Sharia are carried out correctly. This is permissible because basically the goal of owning a house is also a basic need for every human being, also by owning a house someone has carried out the goals of Islamic law or maqashid sharia in part of protecting family and property. So, the existence of Sharia KPR is considered to be able to provide benefits to Muslims in general and to customers in particular. Also in the view of qawaidul fiqhiyyah, contracts in Sharia KPR are permissible by referring to several rules including.

## REFERENCE

- Aisiyah, Binti Nur;. (2015). Sharia Bank Financing Management. Yogyakarta: Kalimidea.
- Al Kattani, Abdul Hayyie; , et al;. (2011). Wahbah Zuhaili, al-Fiqh al-Islam Wa Adillatuh. Jakarta: Gema Human.
- Firmasnyah, Egi Arvian;. (2017). Home Ownership Credit (KPR) Without Banks. Bandung.
- Harisman;. (2015). The Journey of Sharia Banking in Indonesia. Jakarta: Bank Indonesia.
- Hidayatullah, Sharid;. (2013). Qawaid Fiqhiyyah and its Application in Contemporary Sharia Financial Transactions. Jakarta: Gramata Publishing.
- Ifham, Ahmad;. (2017). This is Sharia KPR. Jakarta: PT. Gramedia Pustaka Utama.
- Muhammad Ridho;. (2018). Analysis of the Implementation of the Istisna Agreement in Sharia KPR. Surakarta: Muhammadiyah University of Surakarta.
- Wrong, Ashhawi; Almuslih, Abdullah;. (2001). Islamic Financial Economics Jurisprudence. Jakarta: Darul Haq.

Proceedings of the 1<sup>st</sup> Ikatan Mahasiswa Muhammadiyah International Conference on Environmental Sustainability and Climate Change “Achieving A Collective Awareness in General on the Threat of Climate Change and Environmental Protection” (IMMESCC) 2024

Sam, Ichsam;. (2017). Sharia Council Sharia Financial Fatwa Association. Jakarta: MUI.

Suhardjono, Kuncoro;. (2002). Banking Management Theory and Applications. Yogyakarta: BPFE.

Suhardjono;. (2003). Credit Management for Small and Medium Enterprises. Yogyakarta: UPP AMP YKKN.

Procedures for Implementing Subsidized Kpr and Subsidized Sharia Kpr as well as Subsidized Sarusuna Kpr and Subsidized Sarusuna Syariah Kpr.pdf. (2020, July 23).

Widodo, Sugeng;. (2014). Islamic Financial Institution Financing Modes Application Perspective. Yogyakarta: KAUKABA.