

THE CONTRACT OF MURABAHAH BIL WAKALAH ON THE SAVING-LOAN COOPERATIVE AND SYARIAH FINANCING (KSPPS) REVIEWED FROM JUSTICE AND BENEFIT PERSPECTIVE

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ABSTRACT

The practices of murabahah sales applied in KSPPS are not completely conducted purely, because there is limitation of employee and time in a financial institution that the purchasing/providing goods can be represented to the customer called contract of murabahah bil wakalah. However, this contract is against the justice perspective in which KSPPS obtain profit that is the institution does not take risk on the murabahah object, for the member/candidate of member directly makes transaction to the supplier, and from the benefit point of view, KSPPS gets easiness that it no needs to waste the time to buy goods demanding by the buyer candidate (member/candidate of member), if KSPPS still does the financing in form of murabahah bil wakalah financing, there will be more disadvantage than beneficial.

Keywords: the Contract of *Murabahah bil Wakalah*, Saving-Loan Cooperative and Syariah Financing (KSPPS), Justice, and Benefit.

A. Introduction

Some of Islamic completeness arrange rule or law, parts of the law arranged Islam is human and human called science (*muamalah*). The rule on science basically are human efforts conducted to achieve life welfare and economic prosperity based on the regulation stated in Islamic law.

As social creatures, human often face science problem in the society between those the rich and the poor one, they need each other that the harmony feedback relation happens, for those who healthy can work to get salary, for those who less capable to fulfill their needs can borrow or ask for loan to the rich one thus there will be equal fulfillment of needs in the society. For very complex problem of science, we have to help each other and work together in purpose to fulfill our life needs, as stated in Qur'an Surat Al-Maidah verse 2, as follow:

The meaning: "And give mutual assistance amongs of you in (doing) goodness and devout, and do not give mutual assistance in doing sins and violation. And devout to Allah, Allah truly gives great punishment".

In Indonesia, the Financial Institution consists of two groups, namely Banking Financial Institution and Non-Banking Financial Institution, meaning that this banking financial institution refers to financial institution in the form of bank. Bank is financial institution collecting fund or obtain money saving from the society then distributing to the society who need the fund the form of credit or money loan, whereas, the non-banking financial institution does not mean it does no financial activity like what the bank does, only this institution gives financial service but not a bank. This non-banking financial institution also can withdraw fund from the society indirectly like financing institution such as pawnshop, insurance, cooperative, and others to get good luck as grant from Allah that can get in many ways, for life demands a lot of things. Some people do individually, and others do together.

Technically, the syariah cooperative is a cooperative with principle, purpose and business based on Islamic principles, that are Al-Qur'an and As-sunnah. The general meaning of syariah cooperative refers to business board of cooperative running its activities in Islamic principles. If cooperative has productive business unit of saving-loan, its whole product and operational must be conducted in line with the Instruction of National Syariah Committee (DSN) of the Indonesian Council of Religious Scholars.

The most dominant contract used by KSPPS in cash or credit sales transaction is Murabahah.

The murabahah financing refers to facility in form of fund lending to purchase goods and do payment of goods price from the fund of SYARIAH MICRO FINANCIAL INSTITUTION (LKMS) for the interest and on the name of member/customer, that the fund financing is conducting once in time (Ahmad Subagyo, 2015).

The character of financing is sales transaction resulting in selling credit from selling something, and getting hurry provide the goods to the buyer (debtor) by postponed its price payment to the time decided or by paying installment.

The use of murabahah obtains its legitimation as one of financing method with different condition from bearing interest loan and have to use to finance purchasing of real goods. Murabahah cannot be used to finance goods price bought previously in other transaction, or other interest of cost fulfillment. Murabahah can only applied if there is buyer needing and buying a commodity.

According to Udovits quoted from Saeed. (Saeed Abdullah, 2008), Murabahah is form of commission selling, where the buyer who usually cannot get commodity needs a agent, or because he does not want to get difficulty that he fins service of agent given commission.

According to Ascarya quoted in Usmani. (Ascarya, 2007), the contract of *murabahah* is not main financing form, however, in difficulty of applying *murabahah* and *society* to finance several sectors of social needs, some contemporer islamic leaders has allowed the use of murabahah as the alternative financing form in certain condition.

The word *murabahah* etimologically refers to mutual form (mean: mutually) taken from Arabic, that is *ar-ribhu* (الرِبْحُ) meaning excess and addition (profit) (Abdullah al-Mushlih and Shalam ash-Shawi, 2004). Murabahah is defined as mutual adding (give benefit). The definion from prior islamic leader is sales using capital and benefit known. The principle is to sell goods using price (capital) known by the seller and buyer by additional benefit stated in *fiqh* science, where murabahah means to sell using main capital and clear additional benefit.

Terminologically, murabahah refers to goods purchasing by postponed payment (1 month, 2 months, 3 months and more depended on the agreement). The murabahah financing is given to the customer in line with fulfilling the product needs (inventory) (Karanaen A. Perwataatmadja and Muhammad Syafi'i Antonio, 1999).

Al-Qur'an has never talked directly on murabahah, although there are some bases on sales, profit, loss and trade. Moreover, it seems that there is no *hadits* having direct refferences to the murabahah. The beginning generation of Islamic leader, such as Malik and Syafe'i specifically stated that murabahah sales considered permitted, and they did not support their idea with any *hadist*. A critic of contemporer murabahah concludes murabahah is one of sales types unknow in Prophet period or his followers". The critic believes that the Islamic leaders begin giving opinion on murabahah in the first quater of second century Hijriyah, or even more last. For there is no refference in Al-Qur'an or valid *hadits* accepted, the *fuqaha* must support murabahah using other base. Malik gives his validity by referring to Madinah product: there is agreement of idea (in Madinah) on someone validity purchasing clothes in other city to resell them using agreed profit.

The fuqaha define Murabahah as goods selling as mus as the main cost/price of the goods added *mark-up* or margin of agreed profit (Wiroso, 2005). In line with the book of fiqh, murabahah refers to one of sales form with science character, where this sales is different from *musawwamah* sales (bargaining). Murabahah happens between seller and buyer based on the goods price, the main price of purchasing from the seller known by the buyer and the seller benefit shown to the buyer, where *musawwamah* refers to transaction conducted between seller and buyer with a price without seeing the main price of the goods.

According to Mohammad Husein, murabahah is goods sales using original price added by agreed benefit in this case the seller must tell the main price of his product and decide a level of benefit as its additional (Mohammad Husein, 2013).

The advantages of Murabahah Financing are because murabahah (Fu'adi Rial, 2012) :

a. Easy to implement

Murabahah sales can easily and quickly be applied and understood by conducters of syariah bank see murabahah the same as consumptive investment credit, like credit of vehicle, house and others. Although these two transactions are very different, the fact is that many syariah banks conduct murabahah transaction using very similar pattern to credit given on conventional bank.

b. The bank income can be predicted

The murabahah transaction of syariah bank has been able to conduct income estimation obtained, because in this transaction the customer credit refers to selling price, while in selling price included main portion and benefit one. Thus, in normal condition, the bank can predicts income being obtained.

c. No need to know the customer deeply

When Murabahah with its payment conducted by postponing, there will appear debt for the customer in this case the correlation between the bank and the customer namely relation of debit and credit. Thus, in any condition, the customer must pay his credit of good price being sold. The bank does not need to analyze and find out the payment sources in detail, but it only does it briefly and globally, moreover, in the murabahah product, the careful principle of the bank relatively can be applied in strict way and standardized that the level of losses very small.²¹

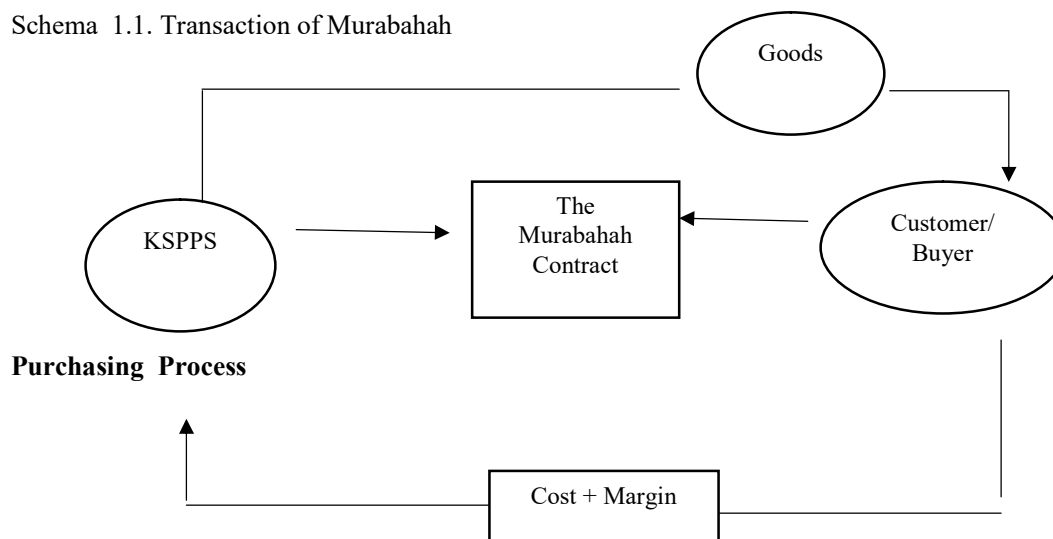
d. The Benefit of *Bai' al* Murabahah

Bai' Al-Murabahah gives many benefits to the Syariah Financial Institution. One of them refers to the profit from difference between purchasing price from the seller and the selling price from the customer. Moreover, the system of *bai' al*-Murabahah also seems to be very simple and makes it easy to manage its administration in Syariah Financial institution. The possible risks must be anticipated are as follow (Muhammad Syafi'i Antonio, 2001):

1. *Default* or the member carelessness that in purposely does not pay his installment.
2. Comparative price fluctuation. It happens when price of a goods in the market increase after the bank purchased to the customer. The bank cannot change the sales price.
3. The customer refusal. The goods sent can be rejected by the member because of various reasons. Therefore, it should be protected by insurance. Other possibility is because the customer feel the goods spesification is different from what he has been ordered. If the bank has signed the purchasinf contract with the seller, the goods belongs to the bank, thus, the bank has risk to sell it to other party.
4. Sold because *bai' al* murabahah refers to sale by credit. Thus, when contract signed, the goods belongs to the customer. The customer free to do anything toward his asset, including to resell it. If it happens, the risk to be default getting bigger.

The problems appearing in line with doing of murabahah contract in KSPPS result from financing in form of lending fund needed by the customer to buy a product and duty to payback the fund in a whole in time of given time, plus by customer, where the payment conducted in cash or credit.

Schema 1.1. Transaction of Murabahah



Source : The Secondary Law Material, 2017

Normatively, in murabahah contract, when the institution does not have goods that needed by the customer as the buyer candidate, KSPPS must do purchasing first to the supplier, thus, the institution (KSPPS) plays as buyer as well as seller to its member/candidate of member in main price plus profit.

Not all practice of murabahah sales decided on KSPPS are conducted purely, because there are employee and time limitation in a financial institution, the purchasing/providing of good can be delegated to the customer. The delegation giving (*wakalah*) generally means as a contract where someone delegated or gives some authority to someone else to do a business, and the someone else accepts it and conducts for and in the name of authority giver (Wirdayaningsih, 2005).

Wakalah or *wikalah* means delivery, delegation, or given mandate (Syafei Antonio, 2001). In Arabic, it can be defined as *at-tafwidh*. The example statement, "I surrender this matter to Allah", represents the meaning.

Murabahah bil wakalah is sales using system of *wakalah*, in this case, the seller party give representative his purchasing to the customer, that the first contract is *wakalah* contract, after it ends signed by goods delivery from the customer to the Syariah Financial Institution then the institution party gives murabahah contract. In line with the Instruction of the National Syariah committee Number :04/DSNMUI/IV/2000 Act 1 verse 9 : "if LKS want to delegate to the customer to buy goods from the third party, the murabahah sales contract must be conducted after the goods, principally, belong to LKS.

The contracts can be applied in human life. *Wakalah* is one of them in line with Science Fiqh principle, for it can be accepted. *Wakalah* means protection (*al-hifzh*), fulfilment (*al-kifayah*), warranty (*al-dhamah*), or delegation (*al-tafwidh*), and also mean giving authority or delegating. The following are other definitions of *Wakalah*:

1. *Wakalah* or *wikalah* means delivery, delegation, or given mandate.
2. *Wakalah* is power delegation by someone as the first party to someone else as the second party in the matters delegated (in this case the second party) only conduct something as much as what authority or power being delegated by the first party, however, if the power has been conducted as what been required, all the risks and responsibilities on being conducted the order fully belongs to the first party or power giver.

Wakalah has several different meanings according to some Islamic leaders. Here are their point of views: (<http://syariahnya.blogspot.com/> pada tanggal 14 Januari 2017)

1. According to Hashbi Ash Shiddieqy, *Wakalah* is the contract of power delivery, where in this contract someone appoints someone else as his representative in taking action (*bertasharruf*).

2. According to Sayyid Sabiq, *Wakalah* refers to power delegation by someone to other people in the matters allowed to be represented.
3. The Leader of *Malikiyah*, *Wakalah* is someone action to delegate himself to other people to do actions referring his rights in which the actions do not related to the power delegation after death, for if related to the action after the death, the form is testament.
4. According to Syafi'iah Leader, he stated that *Wakalah* is a saying containing a matter of delegation by someone to someone else in order the someone else conducts what may be allowed to do in the name of power giver. In line with Islamic, someone may delegate a certain action to other people where the other people acts in the name of the power giver or who delegate as long as the matters delegated allow to by the religion. The rule applied to show the permission, are:

1. Al-Qur'an:

QS Al-Kahfi (18:19):

'And this is how We wake them that they will ask each other among them. Then, one of them says: "how long have you been here?" they answer: "We have been here a day or a half". (other) says: "The God of yours know more how long you are here. Ask one of you to leave to the city by bringing your silver money, and should He See what food is better. He should bring the food for you, and he should do politely and do not tell anything to anyone.'

QS Al-Baqarah (2:283):

" if you in journey (and do sciece without no cash) while you see no expert, there should be any waranty goods in your hand (by the creditur), however, if some of you trust some others. The trusted one do his mandate (his debt) and he should believe in Allah his God; and don not (the witnesses) hide evidence. And anyone hiding it, thus, he is people with sin in his heart; and Allah is the Omniscient One on what you do.

QS An-Nisaa (4:35):

And if you worry of querell between two person, send one *hakam* from man family and one *hakam* from woman family. if the two *hakam* purpose to do recovery, Allah will give guidance to the husband and wife. Really, Allah is the All-Omniscient and the All-Known One.

2. Al-Hadits:

Some hadits as the fundamental of the *wakalah validity* are:

- a. That the Prophet Muhammad delegated Abu Rafi' and an Anshar to represent him mariying Maimunah binti Al Harits ". (HR. Malik in *al-Muwaththa'*)
- b. "Peace can be achieved among the Moslem unless the peace forbiding the permitted or allowing the forbidden; and the Moslem tied with their rules unless the rule forbiding the permitted or allowing the forbidden." (HR Tirmidzi from 'Amr bin 'Auf)

The transaction of murabahah financing often conducted by KSPPS are KSPPS conducts murabahah contract with the customer, and in the same time it delegates purchasing of goods by wakalah contract called murabahah bil wakalah contract. The fund is trasfered to the customer and the customer signs receipt of money as the basic of KSPPS that the customer has conducted money loan.

Based on the legal fact above, the murabahah transaction requires KSPPS becoming goods supplier, however, the fact is KSPPS as the fund giver to provide the goods, thus if KSPPS delegas to the customer/member/candidate to buy murabahah object to supplier, the transaction happens only one step that is between customer/member/candidate directly to the supplier. According to classical *fiqh*, the murabahah transaction should be conducted in two steps that are firstly the transaction between KSPPS and the supplier, till the murabahah object in the hand of KSPPS, then KSPPS conducts transaction with the customer/member/candidate.

The writers believes that in this problem happens legal norm vague. When the sales contract precedes goods purchasing and sales is only conducted in one step, the customer as the representative of KSPPS to buy goods to

the supplier, it make vague the form essence (principle) of murabahah contract in line with the Islamic rules. According to the Instruction of National Syariah committee No. 4 / DSN-MUI/ IV/2000 on *Murabahah*, if the Syarial Financial Institution (LKS) in this case KSPPS accepts the application, it must buy first the asset ordered officionally to the seller or supplier and princplely KSPPS as seller not as fund giver and the sales contract is conducted after the goods belongs to the KSPPS.

B. Research Method

This study focuses on gives priority on normative legal study, analyzing legal substance that it will not lost from normative method, that contradictive to the regulation having authority power as the primary legal materials, to examine the problem appear as the result of the financing activity on the Saving-Loan Cooperative and Syariah Financing with its contract formulated in form of *murabahah bil wakalah* contract. The approach used in this study are the statute approacg, case approach, and conceptual approach.

C. Findings and Discussion

The contract of murabahah bil wakalah in financing of Saving-Loan Cooperative and Syariah Financing (KSPPS) viewed from Justice perspective

The transaction on murabahah financing between KSPPS, *supplier*, and the member/candidate at least happen in two steps of sales transaction. The first step is sales transaction between KSPPS and supplier, the second step is sales transaction between KSPPS and member or candidate, thus it shows a clear role of KSPPS as seller not a money giver. Meanwhile, when the murabahah financing is conducted only one step transaction that is between supplier (first seller) and member/candidate as the buyer.

This pattern is like conventional cooperative institution giving loan fund to member/candidate to buy a product, or in other words it is not murabahah financing but credit contract using guaranty. The writers think that the position or role of KSPPS is not as goods seller but loan giver.

According to Islamic rules, anyone has the same position in front of Allah, the difference is only their piety level. Thus, the rich and the poor are the same in front of Allah in line with judgment. It has stated by Allah in QS. Al Maidah: 8

“To faithful people, you should be people who always uphold (the truth) because of Allah, be fair witness, and do not even once your hate on other group, that pushes you to do injustice. Do in justice way, because justice is close to piety. And be pious to Allah, The truth is Allah Know Well what you conduct”.

The murabahah object bought by KSPPS to the supplier in cash directly or via phone and have not accepted by the buyer (member/candidate), the goods guaranty become responsibility of supplier when the murabahah object broken or lost, the supplier is the one who must responsible not KSPPS, thus, KSPPS has obtained profit from murabahah contract without any risks of the goods. According to the writers, it againts the Theory of Islamic justice. Yusuf Qardhawi gives opinion that: it performs fair equality between capital owner and the worker, and takes risk and effect bravely and responsible. Islamic does not tend to employer (*entrepreneur*) party and defeat the capital owner. Islam does not choose to the capital owner that underestimating the business contribution. Both are in the equal position (Yusuf al-Qardhawii, 2012).

The murabahah object as long as not move to the customer/member yet, the risk belongs to KSPPS that should have function as seller, not supplier responsibility.

The murabahah contract princplely does not tied any party (*ghair lazim*) and still there is *khiyar* according to all *mazhab fikih* however it is different from the instruction of National Syariah committee that murabahah contract has legal relation, that LKS offers asset to the customer who must accept because promise tying legally. The two parties must formula sales contract. This fact becomes demand in practice of LKS world to avoid contract canceling by demander that will result in losses for LKS.

In fact, the practice of murabahah in KSPPS try to not give pressure on the purchasing transaction, because the KSPPS used *wakalah* contract by giving authority to the customer to buy goods he wants however the murabahah contract often happens before giving wakalah and goods fund.

According to AAOIFI (*Accounting and auditing Organization of Islamic Finance Institutions*), when the Syariah Financial Institution (LKS) has to delegate to the customer, "In fact, LKS buys the goods directly from the seller. LKS also may do transaction of purchasing goods by delegating in condition the murabahah customer is not the representative, however in very emergency condition, the customer may be the representative. Then, the customer playing as LKS representative to purchase the goods indirectly sells the goods to himself. However, LKS directly sells the goods to the customer after having the goods. The two guaranties must be separated (responsibility of goods risk): the guaranty of financial institution and customer as the representative of financial institution to buy murabahah goods. It conducts by separated time between contract delegating the customer to do buying and contract of customer buying by murabahah way or agreement to do wakalah contract, then, the selling contract between LKS and the customer happens. The rule that requiring the LKS contract being delegated to the customer is made separated from the murabahah contract between LKS and the customer, it supposes that there is no *syubhat riba* by tying between wakalah contract and murabahah contract (in one unity)." (AAOIFI, 2010).

The contract of murabahah bil wakalah in financing of Saving-Loan Cooperative and Syariah Financing (KSPPS) based on beneficial perspective

Allah SWT in deciding law always take consideration on the life goodness of human being, thus, in its process, it is based on three aspects:

- 1) The Law is decided after the society need the law.
- 2) The Law is decided only according to level of society needs.
- 3) The Law is decided only by the governmental institution that has right to make decision on the law

KSPPS conducts financing by murabahah contract using representative, that the member/candidate (buyer candidate) plays as agent on the name of KSPPS, in one side, KSPPS gets easiness for no need to waste time to buy goods needed by the buyer candidate (member/candidate), moreover, KSPPS gets benefit or does not take risk on the murabahah goods because the member/candidate directly makes transaction to the supplier. KSPPS does financing by the contract of murabahah bil wakalah that if reviewed from beneficial side, *maslahat* (benefit) becomes the syariah purpose. *Maslahat* refers to relative, because there are many benefits in the element of *mafsadat*. However, what should be taken is the stronger and more sides.

In line with classical literature, the emergency condition is often exemplified by someone who lost in a forest and there is no food unless pork that forbidden to eat. In this emergency condition, Allah allows as stated in al-Baqarah : 173

From the rule including in above verse, the Islamic leaders formulate a principle: Meaning: "Emergency has to be limited based on its level", thus, it has expired time and limitation of size and level. For example: if only there was a cow or chicken, dispensation to eat pork was gone. Also, if to protect life was enough with three mouthfuls, it could not be too much till seven or ten mouthfuls, or even if we took more to take home and given to the neighbours.

The writers correlate the *mudharat* (disadvantage) case happened on pork to murabahah application on KSPPS, that for those who make argument that conduct murabahah *bil wakalah* by reason taking aside *mudharat* because of complexion, the argument is rejected and nonsense. For there is other LKS that conduct murabahah financing as what being ruled and they still get benefit. Thus, there is no dispensation for those who conducting murabahah *bil wakalah*.

KSPPS still do financing in form of murabahah *bil wakalah* containing more disadvantages (*kemudharatan*) than its benefits. As stated in Fiqhiyah, the meaning is "Forbidden that causing disadvantage and forbidden to take revenge it in any kinds." (Juhaya Praja, 2014), in other words, the conduct resulting destruction (disadvantage) and *mafsadat* to other people, in general or conduct resulting loss of someone else and give benefit for himself. The principle of fiqhiyah result in legal consequence on forbidding of deception,

counterfeiting, and uncertainty (*gharar*) in sales transaction because it causes loss and suffer to the customer/member (buyer).

Al-Syatibi has interesting explanation related to problem of complexion between *maslahat* and *mafsadat*, if *maslahat* can beat *mafsadat*, the religion must support, in other hand, if *mafsadat* beat *maslahat*, the religion must forbid it. For Imam al-syatibi, *maslahat* from religion does not tolerate any, even the smallest one (Muhammad Mustafied, 2005).

According to Muhamad (Muhammad, 2016), each syariah financial institution has principle to find the Allah willingness to get the goodness now and in the future life. Therefore, any activities of the financial institution that far from religious principles must be avoided, such as:

- a) Stay away from *riba*, by:
 - 1) Avoid using system deciding previously the absolute achievement of a business (QS. Luqman, verse: 34)
 - 2) Avoid using presentation system to give burden on the cost of credit or giving present toward saving that include element of multiplying automatically the credit/saving just because of passing the time (QS. Ali' Imron, 130);
 - 3) Avoid the system of trading/rentaling *riba* goods by obtaining additional in quality or quantity (HR. Muslim Chapter Riba No. 1551 s/d 1567);
 - 4) Avoid using system deciding previously additional on debt that not agreement of the one having the debt voluntary (HR. Muslim, Bab Riba No. 1569 s/d1572).
- b) Decide system of profit sharing and trading, in line with Qur'an surat Al- Baqarah verse 275 and An-Nisa verse 29, every transaction of syariah financial institution must be based on profit sharing system and its trading or transaction is based on exchange between money and goods. Consequently, in science activity, it applies principle of the availability of goods/service and money, that it support production of goods and service, supports stream easiness of goods/service, and can be avoided misusing credit, speculation and inflation.

D. Conclusion

The financing of *murabahah bil wakalah* is contradictive to principles of justice and benefit. This against the justice principle for the transaction conducted in one step, that is between member/candidate directly to the supplier and there is no equal justice between KSPPS and the customer. The member/candidate cannot claim the responsibility of risk on the *murabahah* object that broken to KSPPS but directly to supplier, thus KSPPS has obtained benefit from *murabahah* contract without taking any risk on the goods and transaction is conducted one step that is between member/candidate directly to supplier because of *wakalah* contract. Then having contradictive to principle of benefit, KSPPS conducts financing use *murabahah* contract by representative, that is member/candidate play as agent on the name of KSPPS, in one side KSPPS obtained easiness and no need to waste time buy goods demanded by member/candidate, KSPPS simply gives money based on the customer needs and the customer directly buy the goods as what he want. Principally it is not sales but loan some money with addition that is indication of *riba*, and *murabahah* seen from science side proves not science.

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