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A COMPARATIVE ANALYSIS OF YUSUF AL-QARDAWI'S AND RAFIQ YUNUS AL-MISRI'S LEGAL THOUGHT ON MURĀBAḤAH LI AL-ĀMIR BI AL-SHIRĀ' AND ITS RELEVANCE TO SHARIA ECONOMIC PRACTICE IN INDONESIA

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Abstract:
Murābaḥah li al-Āmir bi al-Shirā' has become the dominant financing instrument in contemporary Islamic banking, particularly in Indonesia, where it serves as a practical alternative to interest-based lending. Despite its widespread adoption, debates continue regarding its legal validity, ethical orientation, and conformity with the objectives of Islamic law. This study comparatively examines the legal reasoning of Yusuf al-Qardawi and Rafiq Yunus al-Misri concerning *Murābaḥah li al-Āmir bi al-Shirā'* and analyzes its implications for Indonesian Islamic banking practices. Employing a normative-juridical approach, the research analyzes the doctrinal foundations of both scholars' views alongside relevant DSN-MUI fatwas, national banking regulations, and institutional practices. The novelty of this study lies in its integration of classical-contemporary comparative fiqh analysis with the practical implementation of murabahah in Indonesia, thereby bridging a gap between theoretical legal discourse and regulatory application. The findings demonstrate that al-Qardawi adopts a maqāṣid-oriented and pragmatic approach that prioritizes public benefit and financial accessibility, whereas al-Misri advocates stricter adherence to classical contractual requirements to prevent legal stratagems resembling interest-based transactions. The study argues that understanding the tension and complementarity between these approaches advances existing scholarship by providing a more comprehensive framework for evaluating murabahah contracts, balancing legal validity, ethical integrity, and the broader objectives of Islamic economic law.

Keywords: *Murābaḥah li al-Āmir bi al-Shirā', Rafiq Yunus al-Misri, Yusuf al-Qardawi.*

A. INTRODUCTION

The emergence of Islamic finance as a viable alternative to conventional interest-based systems reflects a broader socio-religious revival in many Muslim-majority societies. This movement is rooted in the aspiration to establish an economic system that not only avoids *riba* (interest) but also adheres to the ethical, social, and spiritual values embedded within the sharia.[1] As a result, Islamic banking has grown rapidly in recent decades, offering a range of financial products purportedly designed in accordance with Islamic legal principles. Among the most commonly used financial instruments in Islamic banking is *Murābahah li al-Āmir bi al-Shirā'* (مرابحة للآمر بالشراء), a structured sale contract in which a financial institution purchases goods upon the request of a client and subsequently sells them to the client at a predetermined markup price. The contract, often promoted as a sharia-compliant alternative to interest-bearing loans, has attracted both widespread usage and critical examination.

Literally meaning "*murabahah* to the one who orders the purchase," *Murabahah li al-Āmir bi al-Shira'* involves three essential stages: first, a client requests a bank to acquire a specific item; second, the bank purchases and assumes ownership of the item; and third, the bank sells the item to the client at an agreed profit margin, typically payable on a deferred basis. In principle, this arrangement satisfies two key Islamic legal requirements: the prohibition of riba and the permissibility of profit through trade (*al-bay'*). However, scholars and practitioners have long debated the extent to which this model fulfills the substantive requirements of sharia law, particularly with regard to real ownership, risk assumption (*daman*), and the enforceability of the client's promise to purchase (*wa'd*). These concerns are especially significant given the contract's frequent application as a functional substitute for conventional loans, potentially reducing it to a legal fiction that masks an interest-based transaction.[2]

This complex interplay between formal legality and substantive compliance has prompted deep legal reflection among contemporary Muslim jurists. Two influential voices in this regard are Yusuf al-Qardawi and Rafiq Yunus al-Misri. Both scholars share a commitment to reviving Islamic economic principles and fostering interest-free financial systems. However, their approaches to the *Murābahah li al-Āmir bi al-Shirā'*

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[1] Zikri Rahmani dkk., "Implementation of Sharia Economic Principles in the Globalization Era," *Asy Syar'iyyah: Jurnal Ilmu Syari'ah Dan Perbankan Islam* 8, no. 2 (2023): 186-201.

[2] Wahbah Al-Zuhaili, *Al-Fiqh al-Islāmī wa Adillatuh* (Beirut: Dār al-Fikr, 1992).

contract reveal important jurisprudential differences. Al-Qardawi, known for his *maqāṣid*-oriented reasoning, tends to adopt a functionalist perspective that prioritizes ethical outcomes, economic justice, and the socio-religious objectives of the sharia. He acknowledges the practical necessity of *murabahah* financing in contemporary contexts and views the contract as acceptable so long as it adheres to essential conditions and serves the public good (*maslahah*).[3]

In contrast, Rafiq Yunus al-Misri adopts a more cautious and formalist approach, grounded in strict adherence to classical legal methodology (*usul al-fiqh*). He critiques the prevalent application of *murabahah* contracts in Islamic banking for deviating from sharia's core principles, particularly when financial institutions merely simulate ownership or fail to assume genuine commercial risk. Al-Misri expresses concern that excessive reliance on *murabahah* may undermine the credibility of Islamic finance by prioritizing form over substance and facilitating practices that, in essence, replicate conventional interest-based lending under an Islamic guise. His perspective calls for greater rigor in the design and implementation of sharia-based financial products to ensure that they reflect the true spirit of Islamic commercial law.[4]

According to Rafiq Yunus al-Misri, the prohibition or strong restriction of *Murābaḥah li al-Āmir bi al-Shirā'* is closely linked to the realization of *Maqāṣid al-Sharī'ah*, particularly the protection of wealth (*ḥifẓ al-māl*) and the preservation of justice and transparency in commercial transactions.[5] Al-Misri argues that many contemporary murabahah practices merely replicate conventional lending mechanisms under an Islamic legal form, thereby creating a risk of *ḥīlah* (legal stratagem) that obscures the substance of interest-based transactions. From a *maqāṣid* perspective, contracts should not only satisfy formal legal requirements but also achieve genuine economic exchange, risk-sharing, and fairness between parties. When the bank's ownership of the asset is merely nominal or when the transaction effectively guarantees profit without assuming real commercial risk, the contract undermines the objectives of Islamic commercial law.[6] For al-Misri, preventing such practices serves the maqāṣid of

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[3] Yusuf Al-Qaradawi, *Murābaḥah li al-Amir bi al-Syirā' kamā Tajri al-Muṣārif al-Islāmiyyah* (Damascus: Dār al-Qalam, 1998).

[4] Rafīq Yūnus al- Miṣrī, *Uṣūl al-Iqtiṣād al-Islāmī* (Damascus: Dār al-Qalam, 1989).

[5] Miṣrī.

[6] Miṣrī.

safeguarding wealth from unjust acquisition, maintaining market integrity, eliminating elements that may lead to *ribā*, and ensuring that financial transactions contribute to real economic activity rather than artificial debt creation.[7] Therefore, strict adherence to classical murabahah conditions is necessary to preserve both the legal validity and the ethical objectives of Sharīʻah.

The tension between these two approaches—pragmatic ethical reasoning and legal formalism—highlights broader methodological debates within contemporary Islamic jurisprudence. It also raises important questions for the implementation of sharia economic principles in modern Muslim societies. In Indonesia, where Islamic finance has experienced significant institutional growth since the late 1990s, *Murabahah li al-Amir bi al-Shira'* constitutes the backbone of retail Islamic financing.[8] It is widely employed by various financial institutions including Bank Syariah Indonesia (BSI), Bank Perkreditan Rakyat Syariah (BPRS), and microfinance entities such as *Baitul Mal wat Tamwil* (BMT) and Sharia-based cooperatives. These institutions rely on *murabahah* financing to offer consumer credit, working capital, and asset acquisition without recourse to interest.[9]

The institutionalization of *murabahah* in Indonesia is supported by the regulatory and jurisprudential framework developed by national sharia authorities, most notably the *Dewan Syariah Nasional - Majelis Ulama Indonesia* (DSN-MUI). Fatwas issued by DSN-MUI provide detailed guidance on the permissibility and procedural conditions of *murabahah* contracts, often aligning with the more flexible interpretations espoused by scholars like al-Qardawi. However, critical voices have emerged within academic and practitioner circles, questioning the extent to which Indonesian sharia banks truly adhere to the legal and ethical standards envisioned by Islamic jurisprudence. Common concerns include the absence of real asset transfer, the pre-arranged nature of transactions, and the potential for unjust enrichment at the expense of borrowers,

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[7] Rafīq Yūnus al- Miṣrī, *Fiqh al-Mu'amalat al-Maliyah* (Damascus: Dār al-Qalam, 2005).

[8] Yuli Utami, "Banking Interest in the Contemporary Jurist's Perspective: a Yusuf Al-Qaradawi's Economics Thought," *Afkaruna: Jurnal Ilmu-Ilmu Keislaman* 10, no. 2 (2014): 126–48, https://doi.org/10.18196/AIIJIS.2014.%200034.

[9] Panji Adam Agus Putra, Neni Sri Imaniyati, dan Neneng Nurhasanah, "Al-murâbahah li al-âmir bi al-syirâ: Studi Pemikiran Yûsuf al-Qaradhâwî dan Relevansinya dengan Fatwa DSN-MUI," *Istinbath: Jurnal Hukum dan Ekonomi Islam* 20, no. 2 (2021): 262–95, https://doi.org/10.20414/ijhi.v20i2.387.

particularly among low-income populations.[10]

Given these issues, it becomes necessary to revisit the legal foundations of *Murabahah li al-Amir bi al-Shira'* and examine its theoretical underpinnings through the lens of prominent Islamic scholars. This paper seeks to conduct a comparative analysis of the legal thought of Yusuf al-Qardawi and Rafiq Yunus al-Misri concerning the validity and application of this contract. By situating their arguments within the broader context of Islamic commercial jurisprudence and assessing their relevance to Indonesian practice, the study aims to contribute to a deeper understanding of the normative challenges facing Islamic finance today.[11]

The key research questions addressed in this paper are as follows: First, what are the essential legal arguments and normative assumptions underpinning al-Qardawi and al-Misri's views on *Murabahah li al-Amir bi al-Shira'*? Second, how do their respective approaches reflect broader trends in contemporary Islamic legal methodology? Third, how do these perspectives inform or critique the regulatory and practical application of *murabahah* financing in Indonesia's Islamic banking sector?

To answer these questions, the study adopts a normative-juridical methodology, involving textual analysis of the primary writings of both scholars, review of DSN-MUI fatwas, and examination of regulatory guidelines from Indonesian financial authorities. Comparative and contextual analysis will be used to assess the implications of each scholar's legal reasoning for actual practices in Indonesian sharia economics. Through this approach, the paper seeks not only to map the contours of scholarly debate but also to evaluate the extent to which Indonesian Islamic finance embodies the principles of justice, transparency, and compliance that underpin the Islamic legal tradition.

B. RESEARCH METHODE

The study adopts a normative-juridical methodology, involving textual analysis of the primary writings of both scholars, review of DSN-MUI fatwas, and examination of regulatory guidelines from Indonesian financial authorities. Comparative and contextual analysis will be used to assess the implications of each scholar's legal reasoning for actual practices in Indonesian sharia economics. Through this approach, the paper seeks not only to map the contours of scholarly debate but also to evaluate the extent to which Indonesian Islamic finance embodies the principles of justice,

[10] Putra, Imaniyati, dan Nurhasanah.

[11] Rahmani dkk., "Implementation of Sharia Economic Principles in the Globalization Era."

transparency, and compliance that underpin the Islamic legal tradition.

C. DISCUSSION

1. The Concept and Structure of *Murābaḥah li al-Āmir bi al-Shirā'*

a. Conceptual Foundations

Murābaḥah li al-Āmir bi al-Shirā' (مرابحة للآمر بالشراء) is a specific application of the classical Islamic sales contract known as *murābaḥah*, a cost-plus sale in which the seller discloses the original purchase price and adds a known profit margin.[12] The term *li al-Āmir bi al-Shirā'* adds an important qualification: it refers to a situation where the buyer (i.e., a bank customer) initially instructs the seller (typically an Islamic financial institution) to purchase a particular item, with the understanding that the customer will subsequently purchase that item from the bank. This model has emerged as a cornerstone of modern Islamic finance and is especially prevalent in asset-based financing.[13]

In classical Islamic jurisprudence (*fiqh*), a *murābaḥah* transaction was typically conducted between two parties where the seller already owned the good. However, contemporary Islamic banks needed a financing structure that avoids *riba* (interest), complies with sharia, and fulfills the commercial function of lending capital. *Murābaḥah li al-Āmir bi al-Shirā'* was developed in this context: instead of lending money directly, the bank buys the asset and sells it to the client at a profit, thus earning income through trade rather than interest. This structure allows Islamic financial institutions to meet the liquidity needs of their clients while maintaining formal compliance with Islamic commercial principles.[14]

The legitimacy of this contract in contemporary settings has been widely discussed among scholars and sharia advisory boards. It is viewed as a

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[12] Rafīq Yūnus al- Miṣrī, *Fa'idah al-Qard wa Nazariyyatuha al-Hadithah (Min Wijhati Nazri al-Islam)* (Beirut: Dār al-Fikr al-Mu'āsir, 1999).

[13] Bismi Khalidin, Armiadi Musa, dan Andri Kiawan, "Murabaha Financing of the Indonesian Islamic Banks under an Islamic Economic Law and the Fatwa DSN MUI," *Petita: Jurnal Kajian Ilmu Hukum dan Syariah* 8, no. 2 (2023): 203-18, https://doi.org/10.22373/petita.v8i2.238.

[14] Lince Bulutoding dkk., "Antecedents and Consequence of Murabaha Funding in Islamic Banks of Indonesia," *Journal of Asian Finance, Economics and Business* 8, no. 3 (2021): 487-95, https://doi.org/10.13106/jafeb.2021.vol8.no3.0487.

permissible method of financing, so long as certain legal and ethical conditions are fulfilled—particularly with respect to risk ownership, asset transfer, transparency, and mutual consent.

b. Legal Components and Contractual Elements

The structure of *Murābaḥah li al-Āmir bi al-Shirā'* involves a series of interrelated contractual steps that distinguish it from a conventional *murābaḥah* or a straightforward sale. The following are the key legal elements:

(1) The Client's Purchase Request (*al-amr bi al-shirā'*)

The process typically begins with a client requesting the Islamic bank to procure a particular item or commodity. This request may be general or specific, but it does not initially constitute a binding obligation on either party. It is simply a form of instruction or expression of interest. Some jurists consider this stage analogous to a *promise to contract*, which remains morally binding but legally non-enforceable in its early form.[15]

(2) The Promise to Purchase (*waʿd*)

Upon the client's request, the bank may seek a unilateral or mutual *waʿd* (promise) from the client indicating their intention to purchase the goods once acquired. Juristic opinions vary on whether such a promise can be binding. Scholars like Yusuf al-Qardawi allow for binding promises under certain conditions to promote trust and economic stability, provided they do not violate principles of voluntarism in contracts. In contrast, stricter jurists argue that turning the promise into a binding legal obligation effectively transforms the transaction into a loan with interest in disguise.[16]

In many contemporary applications, including in Indonesia, the *waʿd* is treated as binding to ensure operational predictability and limit the financial institution's exposure to risk. This raises critical questions regarding the enforceability of such promises under both Islamic legal theory and national legal systems.[17]

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[15] Ade Komaludin dan Iis Surgawati, "Murabaha financing: Empirical evidence in Indonesian Islamic banking," *International Journal of Innovation, Creativity and Change* 9, no. 12 (2019): 49-65.

[16] Bulutoding dkk., "Antecedents and Consequence of Murabaha Funding in Islamic Banks of Indonesia."

[17] Utami, "Banking Interest in the Contemporary Jurist's Perspective: a Yusuf Al-Qaradawi's Economics Thought."

(3) Purchase and Ownership by the Bank

The bank must genuinely purchase and assume ownership of the commodity from a third-party seller before selling it to the client. This is the most critical element from a sharia compliance perspective. The bank must take both legal and constructive possession of the asset (*qabd haqiqi* or *hukmi*), thereby assuming the ownership risks (*daman*) associated with the asset during this interim period.[18]

This requirement is rooted in the prophetic hadith: *lã tabi` mã laysa `indak* or "Do not sell what you do not own" (Sunan al-Tirmidhi, Hadith No. 1232). The wisdom behind this is to ensure that financial gain in Islamic transactions is linked to risk and liability, not simply the passage of money. However, in practice, many Islamic financial institutions engage in back-to-back transactions that involve very short intervals of ownership, sometimes purely formal, thus raising questions about the authenticity of the ownership and risk transfer.[19]

(4) *Murabahah* Sale to the Client

Once the bank acquires ownership, it sells the item to the client at an agreed markup price. The cost of the item and the profit margin must be clearly disclosed to the client at the time of the sale. This transparency is a defining feature of *murābaḥah* and is a condition for its validity under classical and contemporary fiqh.[20]

The sale may be executed for immediate payment (*bithaman ḥāl*) or, more commonly in financial applications, for deferred payment (*bithaman ajil*). When deferred, the bank may offer installment plans or a lump-sum payment arrangement over a fixed tenure. The markup or profit in a deferred payment scenario is not considered *riba* because it is part of a trade agreement rather than a loan.

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[18] Komaludin dan Surgawati, "Murabaha financing: Empirical evidence in Indonesian Islamic banking."

[19] Linda Firdawaty dkk., "Yusuf Al-Qardhawi's Perspective of Ihdad and its Relevance to Career Women's Leave Rights in Bandar Lampung," *Jurnal Ilmiah Al-Syir'ah* 21, no. 2 (2023): 211-23, https://doi.org/10.30984/jis.v21i2.2343.

[20] Permata Wulandari dkk., "Contract agreement model for murabahah financing in Indonesia Islamic banking," *International Journal of Islamic and Middle Eastern Finance and Management* 9, no. 2 (2016): 190-204, https://doi.org/10.1108/IMEFM-01-2015-0001.

Table 1. Contractual Stages of *Murābaḥah li al-Āmir bi al-Shirā'*

Stage	Description	Sharia Requirement
Client Request (*Amr*)	The client requests the bank to procure a specific item or asset.	Non-binding; must not constitute a sale at this point.
Promise to Purchase (*Waʿd*)	The client issues a promise to buy the item after the bank acquires it.	Can be morally or legally binding, depending on juristic opinion.
Bank Purchases Asset	The bank buys the requested asset from the supplier and assumes ownership and risk.	Full legal and constructive ownership is required (*qabd haqiqi* or *hukmi*).
Asset Delivery to Bank	The supplier delivers the asset to the bank.	The bank must take delivery (physical or constructive) before resale.
Murabahah Sale Agreement	The bank sells the asset to the client at a disclosed cost-plus-profit price.	The price, cost, and profit must be clearly stated.
Payment by Client	The client pays the agreed price either in full or through installments, often on a deferred basis.	Deferred payment is permissible as long as it is agreed upon upfront.

The table outlines the sequential stages involved in the implementation of *Murābaḥah li al-Āmir bi al-Shirā'*, highlighting the contractual flow between the client and the Islamic financial institution. It begins with the client's non-binding request to procure a specific asset, followed by a promise (*waʿd*) to purchase, which may be treated as binding to ensure transaction certainty. The bank then purchases the asset and must assume full ownership and possession—either physically or constructively—before reselling it to the client at a disclosed cost-plus-profit price. Payment is typically made on a deferred basis, in installments or lump sum, after which ownership is transferred to the client. Each stage reflects core sharia principles such as transparency, risk-taking, voluntarism, and the prohibition of *riba*, ensuring that the transaction is based on trade, not lending. The table serves as a structural guide for evaluating the legal and ethical integrity of the *murabahah* transaction in

Islamic finance practice.

c. Aplication in Islamic Banking and Finance

In contemporary Islamic banking, *Murābaḥah li al-Āmir bi al-Shirā'* is commonly used to finance asset purchases such as vehicles, real estate, machinery, and even consumer goods. It has become a go-to instrument for financial institutions due to its relatively low risk, structured cash flow, and ease of documentation.

Islamic banks in Indonesia, including Bank Syariah Indonesia (BSI), Bank Muamalat, and various BPRS institutions, employ this model extensively. Microfinance institutions such as PNM Mekaar Syariah also utilize variations of this contract to finance working capital for women-led microenterprises, although with adjustments for group liability and simplified documentation.[21] Fatwa DSN-MUI No. 04/DSN-MUI/IV/2000 provides the national regulatory basis for *murabahah*-based financing and outlines the shariah requirements, including ownership, transparency, and non-coercion.

Nonetheless, the practical implementation of this contract raises ongoing concerns. Scholars and observers have criticized instances where banks do not take meaningful possession of the goods or pre-arrange the purchase and resale in such a way that it closely resembles a conventional loan.[22] This issue is exacerbated when the bank contracts with the supplier on behalf of the client and never physically or legally assumes the asset, rendering the transaction a legal formality devoid of genuine trade and risk.[23]

d. Normative and Jurisprudential Debates

The debate over the legitimacy of *Murābaḥah li al-Āmir bi al-Shirā'* is not merely technical but reflects broader questions about the objectives (*maqāṣid*) of Islamic commercial law. Proponents, such as Yusuf al-Qardawi,

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[21] Vira Dwi Novianti, "A Qard-Based Microfinance under PNM Mekaar Syariah: A Legal Assessment from the Perspective of Positive Sharia Law and Classical Islamic Jurisprudence," *El-Aqwal: Journal of Sharia and Comparative Law* 4, no. 2 (Oktober 2025): 157-76, https://doi.org/10.24090/el-aqwal.v4i2.14076.

[22] Firdawaty dkk., "Yusuf Al-Qardhawi's Perspective of Ihdad and its Relevance to Career Women's Leave Rights in Bandar Lampung."

[23] Fadli Daud Abdullah, Ramdani Wahyu Sururie, dan Oyo Sunaryo Mukhlas, "Analisis Putusan Hakim Pengadilan Agama Kabupaten Cirebon pada Prosedur Eksekusi Sita Jaminan Perkara Murabahah," *Strata Social and Humanities Studies* 1, no. 2 (2023): 71-81.

argue that the contract serves a valuable function in providing sharia-compliant financing in a world dominated by conventional banking systems. They emphasize the importance of flexibility and public interest (*maṣlaḥah*) in achieving the broader goals of the sharia: justice, transparency, and economic empowerment.[24]

In contrast, critics like Rafiq Yunus al-Misri caution against excessive accommodation to modern financial practices at the expense of Islamic legal integrity. They argue that the overuse of murabahah, especially in forms that replicate interest-based loans, risks transforming Islamic finance into a symbolic system that replicates the mechanics of conventional banking under religious terminology.[25]

The structure of *Murābaḥah li al-Āmir bi al-Shirā'* offers a practical mechanism for Islamic financial institutions to provide sharia-compliant financing while avoiding interest.[26] Its validity rests upon key legal conditions: genuine asset ownership, disclosure of costs, profit margins, and the avoidance of pre-arranged sales that circumvent risk transfer.[27] As practiced widely in Indonesia and elsewhere, the model has become essential to Islamic finance, but its implementation varies in ethical and legal integrity. A thorough understanding of its legal structure is vital before analyzing the theoretical contributions of Yusuf al-Qardawi and Rafiq Yunus al-Misri, who offer distinct interpretations of its compliance with Islamic law.[28]

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[24] Khalidin, Musa, dan Kiawan, "Murabaha Financing of the Indonesian Islamic Banks under an Islamic Economic Law and the Fatwa DSN MUI."

[25] Miṣrī, *Uṣūl al-Iqtiṣād al-Islāmī*.

[26] Hamsir, Nila Sastrawaty, dan Zainuddin, "The Dominance of Debt-Based Financing in Islamic Banking: Legal Challenges and Implications in Indonesia," *Manchester Journal of Transnational Islamic Law and Practice* 21, no. 2 (2025): 145–56.

[27] Dirvi Surya Abbas dkk., "The Influence of Internal Bank Financial Ratios on Murabaha Financing: Evidence from Indonesian Islamic Commercial Banks," *Jordan Journal of Business Administration* 21, no. 6 (2025): 920–33, https://doi.org/10.35516/jjba.v22i2.895.

[28] Putra, Imaniyati, dan Nurhasanah, "Al-murâbahah li al-âmir bi al-syirâ: Studi Pemikiran Yûsuf al-Qaradhâwî dan Relevansinya dengan Fatwa DSN-MUI."

2. Yusuf al-Qardawi's Legal Thought on *Murābaḥah li al-Āmir bi al-Shirā'*

Yusuf al-Qardawi (1926-2022) was one of the most influential contemporary Muslim jurists and a leading voice in the field of Islamic economics and finance. His legal thought represents a balanced integration of classical jurisprudence and modern socio-economic concerns, grounded in the overarching framework of *maqāṣid al-sharī'ah* (the higher objectives of Islamic law). Al-Qardawi's approach to Islamic finance—including his views on *Murābaḥah li al-Āmir bi al-Shirā'*—demonstrates a pragmatic orientation that seeks to harmonize legal form with ethical substance while accommodating the practical realities of modern banking and commerce.

Al-Qardawi acknowledges that the *Murābaḥah li al-Āmir bi al-Shirā'* contract is not a traditional form of *murabahah* as known in classical *fiqh*, where the seller already owns the good and simply sells it at a profit with full cost disclosure. In the contemporary setting, *murabahah* has evolved into an institutional financing mechanism whereby Islamic banks facilitate client purchases through a cost-plus sale. While this transformation introduces elements not found in early jurisprudential models—such as the binding promise (*waʿd*) and the bank's intermediation—al-Qardawi views this development as a legitimate form of *ijtihād* (independent legal reasoning) in response to the structural demands of a modern financial system.[29]

Central to al-Qardawi's legal justification of *Murābaḥah li al-Āmir bi al-Shirā'* is the principle that Islam permits profit through lawful trade (*al-bayʿ*), provided that the trade involves real risk and ownership. He affirms that the markup in *murabahah* is permissible because it is the outcome of a commercial transaction, not a loan-based interest charge.[30] In his work *Fiqh al-Zakāh* and various writings on Islamic economics, he emphasizes the distinction between profit derived from productive activity and income generated through passive lending.[31] Thus, *murabahah*—when properly structured—serves as an ethical alternative to riba-based lending, aligning with the Quranic injunctions that permit trade but prohibit usury (Qur'an, 2:275).

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[29] Al-Qaradawi, *Murābaḥah li al-Amir bi al-Syirā' kamā Tajri al-Muṣārif al-Islāmiyyah*.

[30] Al-Qaradawi.

[31] Yusuf Al-Qardawi dan Monzer Kahf, *Fiqh al Zakah: a Comparative Study of Zakah, Regulations and Philosophy in the Light of Qur'an and Sunnah* (Jeddah: King Abdulaziz University, 2000).

However, al-Qardawi is not uncritical of the ways in which *murabahah* is practiced by some Islamic banks. He repeatedly warns against reducing Islamic finance to a mere imitation of conventional banking practices cloaked in Islamic legal terminology. Specifically, he cautions against practices in which banks claim to own assets without actually assuming risk, or where the process is reduced to a formality that replicates a loan transaction in substance if not in form. For al-Qardawi, the legitimacy of *murabahah* depends not only on formal compliance with sharia conditions but also on its ethical integrity and contribution to justice in economic relations.

On the issue of the client's promise to purchase (*waʿd*), al-Qardawi accepts the permissibility of binding unilateral promises under certain circumstances. He argues that such promises, although not enforceable in classical jurisprudence, may be treated as binding in modern commercial transactions to ensure mutual trust and prevent losses. He supports this view with the principle of *al-ʿurf* (customary practice) and the notion that public interest (*maṣlaḥah*) can justify legal developments within the framework of Islamic law. This position has been influential in shaping contemporary fatwas, including those issued by the International Islamic Fiqh Academy and the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), which also allow for binding promises in *Murābaḥah li al-Āmir bi al-Shirā'* under specified conditions.[32]

Al-Qardawi's *maqāṣid*-based approach provides a broader ethical lens through which murabahah and other Islamic financial contracts can be evaluated. He argues that Islamic finance must serve the greater objectives of sharia, which include justice, transparency, the promotion of economic welfare, and the prevention of exploitation.[33] In this light, *Murābaḥah li al-Āmir bi al-Shirā'* is not merely a technical workaround to avoid riba, but a tool that must advance genuine socio-economic development. He thus encourages Islamic banks to use *murabahah* as a transitional instrument while gradually moving toward profit-and-loss sharing

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[32] Maria Bhatti, Muhammad Shujaat Saleem, dan Fadillah Mansor, "Need for reform in AAOIFI standards on murabaha financing: evidence from Islamic Banks in Pakistan," *Quality & Quantity* 59, no. Suppl 1 (2025): 59-78.

[33] Hamsir, Sastrawaty, dan Zainuddin, "The Dominance of Debt-Based Financing in Islamic Banking: Legal Challenges and Implications in Indonesia."

models like *mushārakah* and *muḍārabah*, which he considers more reflective of the spirit of Islamic finance.[34]

In the context of developing countries, including Indonesia, al-Qardawi recognizes the importance of pragmatic solutions that can accommodate local financial constraints and institutional limitations. He supports the use of *murabahah* in financing small and medium enterprises, housing, and essential consumer goods, provided that the contractual process is transparent, free from deception, and involves real trade. His writings have had considerable influence on Islamic financial policy in Indonesia, particularly through the works of DSN-MUI and other national sharia bodies, many of which align with his flexible, *maqāṣid*-driven approach.[35]

Nevertheless, al-Qardawi expresses concern about overreliance on *murabahah* financing, which now constitutes the dominant share of Islamic banking portfolios in many countries. He urges financial institutions to innovate within the framework of Islamic law to offer more equitable and participatory alternatives. In his view, an Islamic economic system must ultimately move beyond mere legal compliance and strive toward the establishment of a just, ethical, and inclusive financial order.[36]

Yusuf al-Qardawi's legal thought on *Murābaḥah li al-Āmir bi al-Shirā'* reflects a careful balance between classical jurisprudence and modern economic realities. He upholds the permissibility of the contract when implemented in accordance with sharia principles, especially those relating to ownership, transparency, and risk-sharing. At the same time, he insists that Islamic finance must serve broader ethical goals and not be reduced to formalistic substitutions for interest-based practices. His contributions continue to shape the theoretical foundation and practical evolution of *murabahah* financing in contemporary Muslim societies, including Indonesia.[37]

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[34] Abbas dkk., "The Influence of Internal Bank Financial Ratios on Murabaha Financing: Evidence from Indonesian Islamic Commercial Banks."

[35] Niluh Anik Sapitri dan Nurhikma Nurhikma, "Pengaruh Pembiayaan Murabahah Bil Wakalah dan Tanggung Renteng Terhadap Minat Masyarakat Menjadi Nasabah PT. Permodalan Nasional Madani (PNM) Mekaar Syariah Cabang Bajeng Barat," *Journal of Ecotourism and Rural Planning* 1, no. 2 (2024): 1-17.

[36] Al-Qaradawi, *Murābaḥah li al-Amir bi al-Syirā' kamā Tajri al-Muṣārif al-Islāmiyyah*.

[37] Putra, Imaniyati, dan Nurhasanah, "Al-murâbahah li al-âmir bi al-syirâ: Studi Pemikiran Yûsuf al-

3. Rafiq Yunus al-Misri's Legal Thought on *Murābaḥah li al-Āmir bi al-Shirā'*

Rafiq Yunus al-Misri is a contemporary Syrian economist and jurist whose works in Islamic finance emphasize legal precision, risk integrity, and adherence to the substantive principles of Islamic commercial law. Unlike Yusuf al-Qardawi's more flexible *maqāṣid*-oriented approach, al-Misri's legal thought is characterized by a cautious and formalist reading of Islamic jurisprudence. He is particularly concerned with how Islamic financial contracts—while ostensibly sharia-compliant—may in practice drift into forms that contradict the spirit and letter of the law. This concern is central to his critical evaluation of *Murābaḥah li al-Āmir bi al-Shirā'*.[38]

Al-Misri recognizes that *murābaḥah*, as a form of cost-plus sale, is permissible in Islamic law. However, he contends that the adaptation of *murābaḥah* into a modern financial instrument must not compromise key legal requirements, particularly with respect to ownership (*milk*), risk-bearing (*ḍamān*), and voluntarism (*ikhtiyār*). In his view, many contemporary implementations of *Murābaḥah li al-Āmir bi al-Shirā'* fall short of these standards, especially when financial institutions merely simulate the process of asset ownership or manipulate the timing of contracts to create legal form without economic substance.[39]

One of al-Misri's main critiques is directed at the bank's role in acquiring and owning the asset. He emphasizes that a valid *murābaḥah* requires the bank to first purchase the asset and bear its risk, however briefly, before reselling it to the client. If the bank enters into a purchase agreement only after securing the client's binding commitment to buy—without assuming real risk—then the transaction becomes, in his view, indistinguishable from an interest-bearing loan. The presence of a *waʿd* (promise to purchase), especially when it is made binding, may lead to what he terms a "pre-sold transaction," which he considers prohibited under classical Islamic jurisprudence. In this context, the markup charged by the bank is functionally similar to interest, despite its legal disguise as profit.[40]

Qaradhâwî dan Relevansinya dengan Fatwa DSN-MUI."

[38] Miṣrī, *Uṣūl al-Iqtiṣād al-Islāmī*.

[39] Hary Hoiruman Abdillah, "Murabahah Li Al-Amir Bi Al-Syira and Its Implementation in Concept of Financing at Sharia Financial Institutions in Indonesia," *Journal of Economicate Studies* 1, no. 1 (2017): 9-22.

[40] Naqib Ullah Atal dkk., "Drivers of intention to use Murabaha financing: religiosity as moderator,"

Al-Misri also critiques the widespread institutional practice of back-to-back contracts, where the bank does not take physical or even constructive possession of the asset but simply acts as a financial intermediary. For him, this undermines the sharia principle that profit is only justified through ownership and liability. He is deeply critical of financial engineering that reduces the transaction to a contractual formality, in which no real goods are exchanged and the transaction merely serves as a method of capital financing under another name.[41]

Moreover, al-Misri expresses concern about the ethical and systemic implications of *murābaḥah*-dominated Islamic banking. He argues that excessive reliance on this model promotes a "debt-based" mindset among Islamic financial institutions, limiting the development of more equitable and risk-sharing models such as *muḍārabah* and *mushārakah*. In his writings, he urges Islamic banks to move away from the over-commercialization of *murābaḥah* and instead embrace more participatory and productive financing modes that are more consistent with Islamic economic ideals.[42]

Unlike more utilitarian scholars, al-Misri is reluctant to invoke *maṣlaḥah* (public interest) to justify departures from established legal norms. While he acknowledges the need for practical solutions in the context of modern banking, he maintains that legal form and economic substance must not diverge. He warns that invoking *maṣlaḥah* without clear textual and juristic support may open the door to excessive legal manipulation and eventual erosion of sharia authenticity.

In terms of regulatory implications, al-Misri calls for stronger sharia oversight, more rigorous documentation of asset ownership, and mechanisms that ensure genuine risk is borne by financial institutions in *murābaḥah* transactions. He believes that transparency, enforceability, and contractual discipline are necessary to restore the credibility of Islamic finance. Importantly, his critique is not a rejection of *murābaḥah* per se, but a call for its reform and purification in line with classical jurisprudential standards.[43]

Rafiq Yunus al-Misri's legal thought presents a more conservative and

Journal of Islamic Marketing 13, no. 3 (2022): 740-62, https://doi.org/10.1108/JIMA-07-2019-0147.

[41] Miṣrī, *Uṣūl al-Iqtiṣād al-Islāmī*.

[42] Miṣrī, *Fiqh al-Mu'amalat al-Maliyah*.

[43] Miṣrī, *Uṣūl al-Iqtiṣād al-Islāmī*.

technical perspective on *Murābaḥah li al-Āmir bi al-Shirā'*. He accepts its permissibility in principle but raises significant concerns about its contemporary implementation, particularly when the contractual structure is used to mimic interest-based lending without genuine asset transfer and risk. His views serve as a reminder that Islamic finance must not only comply with procedural rules but also uphold the ethical and economic foundations of sharia.[44] In the context of Indonesia and other Muslim-majority economies, his cautionary stance challenges Islamic financial institutions to move beyond formal compliance and ensure that their practices reflect the true substance of Islamic commercial ethics.

4. Comparative Analysis: Convergence and Divergence

The legal thought of Yusuf al-Qardawi and Rafiq Yunus al-Misri on *Murābaḥah li al-Āmir bi al-Shirā'* reveals both convergent principles and divergent methodologies. While both scholars are committed to advancing Islamic economic practices that are free from riba and aligned with sharia objectives, they differ significantly in how they interpret the permissibility, conditions, and implementation of murabahah-based financing in modern banking.

a. Points of Convergence

Both al-Qardawi and al-Misri agree that *murābaḥah* as a contract–when implemented properly–is permissible in Islamic law. They acknowledge its legitimacy as a cost-plus sale that allows a seller to disclose the cost of goods and add a profit margin, provided the transaction is transparent and free from deception (*gharar*). They also concur that in principle, *Murābaḥah li al-Āmir bi al-Shirā'* can serve as an alternative to interest-based lending, particularly in contexts where more ideal Islamic financing modes like *muḍārabah* or *mushārakah* are not yet viable due to institutional or regulatory limitations.

Both scholars emphasize the necessity of asset ownership and risk assumption by the financial institution. They uphold the sharia principle that profit must be accompanied by liability (*al-kharāj bi al-ḍamān*). This foundational concept ensures that financial institutions are not merely charging for the use of money, but engaging in legitimate trade with real exposure to market risk. Consequently, both al-Qardawi and al-Misri agree that any murabahah

[44] Miṣrī, *Fiqh al-Mu'amalat al-Maliyah*.

transaction that bypasses true asset ownership or risk undermines its legal and moral integrity.[45]

b. Points of Divergence

Despite these shared foundations, the scholars' interpretations diverge in several important respects—particularly in their legal methodology, degree of permissibility, and views on the role of contractual formalism.

Yusuf al-Qardawi adopts a more flexible and functionalist approach. He allows for innovations in contract structures, such as the binding promise (*waʿd*), as long as these mechanisms support legitimate economic objectives and do not explicitly contradict clear prohibitions in sharia. His reasoning is shaped by the *maqāṣid al-sharīʻah*, whereby public interest (*maṣlaḥah*), economic justice, and social welfare can justify new interpretations or modified practices. Thus, al-Qardawi accepts the use of binding promises in *Murābaḥah li al-Āmir bi al-Shirā'*, considering it necessary to ensure transactional trust and predictability, especially in institutional settings.[46]

In contrast, Rafiq Yunus al-Misri approaches the issue from a more cautious and formalist perspective. He is wary of stretching classical legal principles to accommodate modern commercial practices that may, in substance, resemble prohibited transactions. Al-Misri is particularly critical of binding promises that effectively obligate the client before the bank takes ownership of the asset, as this could lead to a disguised loan contract. He insists on strict adherence to the classical sequence of contract formation: first ownership, then sale. To him, violating this sequence—even for pragmatic reasons—risks transforming *murabahah* into a symbolic exercise that merely replicates interest-based lending.[47]

Moreover, al-Qardawi views *Murābaḥah li al-Āmir bi al-Shirā'* as a transitional solution, a practical tool to facilitate access to Islamic finance while the system matures toward more equitable, risk-sharing models. Al-Misri,

[45] Abdillah, "Murabahah Li Al-Amir Bi Al-Syira and Its Implementation in Concept of Financing at Sharia Financial Institutions in Indonesia."

[46] Yusuf Al-Qardawi, *Dirāsah fi Fiqh Maqāṣid al-Syarī'ah: bayna al-Maqāṣid al-Kulliyah wa al-Nuṣūṣ al-Juz'iyyah* (Cairo: Dār al-Syurūq, 2006).

[47] Miṣrī, *Fiqh al-Mu'amalat al-Maliyah*.

however, cautions against normalizing *murabahah* as the dominant financing mode, arguing that it encourages debt-based practices and impedes the growth of a truly Islamic economic system based on cooperation and partnership.

c. Broader Implications

These differences reflect broader tensions in contemporary Islamic finance: whether to prioritize practical adaptability (as advocated by al-Qardawi) or juristic purity and structural integrity (as insisted by al-Misri). Their positions also influence how Islamic banks structure their products, interpret sharia compliance, and engage with regulatory frameworks, especially in countries like Indonesia, where *murabahah* contracts are widely practiced.[48]

Ultimately, the comparative analysis highlights the need for balance—between maintaining legal form and achieving ethical substance, between ideal theory and applied reality. Both perspectives offer critical insights that can help shape more robust, transparent, and principled Islamic financial practices in Indonesia and beyond.

5. Application in Indonesian Sharia Economic Practices

In Indonesia, *Murābaḥah li al-Āmir bi al-Shirā'* is one of the most commonly used contracts in the Islamic finance industry. Its widespread application is largely due to its practicality, legal clarity, and alignment with existing banking regulations. This contract serves as a cornerstone for sharia-compliant financing in various institutions, including commercial Islamic banks, rural Islamic banks (*BPRS*), and Islamic microfinance providers. The use of *murabahah* in Indonesia reflects both the influence of global Islamic financial practices and the incorporation of local sharia legal reasoning through national fatwas and regulatory instruments.[49]

The legal foundation for the implementation of *Murābaḥah li al-Āmir bi al-Shirā'* in Indonesia is provided by Fatwa DSN-MUI No. 04/DSN-MUI/IV/2000, which outlines the principles and conditions for *murabahah*-based financing. This fatwa allows Islamic financial institutions to purchase an asset at the request of a client

[48] Zulkifli Hasan, "Yusuf al-Qardawi dan Sumbangan Pemikirannya," *Global Journal Al-Thaqafah* 3, no. 1 (2013): 49-64.

[49] Cut Diah Syavira, K. Kamilah, dan Nurul Inayah, "Pengaruh Pembiayaan Murabahah dan Lama Pengembalian Pembiayaan terhadap Perkembangan UMKM pada PNM Mekaar Syariah," *Mamen: Jurnal Manajemen* 3, no. 1 (2024): 1-15.

and sell it with a known profit margin, provided that ownership and risk are temporarily assumed by the institution before the resale. The fatwa also permits the use of a binding promise (*waʿd*) from the client to ensure that the bank is not exposed to unnecessary risk. Furthermore, regulatory bodies such as the Financial Services Authority (OJK) and Bank Indonesia have developed supervisory frameworks that accommodate *murabahah* within the national financial architecture.[50]

In practice, Islamic banks in Indonesia, such as Bank Syariah Indonesia (BSI) and Bank Muamalat, rely heavily on *Murābaḥah li al-Āmir bi al-Shirā'* to finance consumer purchases, property acquisition, and working capital. The structure is also popular in Bank Perkreditan Rakyat Syariah (BPRS) for small-scale financing of vehicles, electronics, home improvements, and business tools. In these institutions, *murabahah* contracts typically follow standardized documentation processes, wherein the client signs a request form, issues a promise to purchase, and enters into a *murabahah* sale agreement once the bank acquires the goods.[51]

However, while the application appears procedurally sound, there are notable practical challenges and critiques regarding the integrity of implementation. One of the main concerns is whether banks truly assume ownership and risk of the goods before resale. In many cases, ownership is deemed to have occurred based on documentation rather than actual possession, which may reduce the transaction to a legal formality. This practice contradicts the sharia requirement that the seller (in this case, the bank) must bear the risks of ownership, even for a short period, before profiting from the resale. Critics argue that such arrangements undermine the ethical foundations of Islamic finance and resemble conventional loans disguised as trade.[52]

Another concern lies in the binding nature of the promise (*waʿd*). Although the DSN-MUI fatwa permits binding promises, some scholars, including Rafiq Yunus al-Misri, question whether enforcing such promises undermines the voluntary nature

[50] Ali Hardana, "Implementasi akad murabahah untuk pembiayaaan modal usaha di bank syariah indonesia sipirok," *Jurnal pengabdian masyarakat: pemberdayaan, inovasi dan perubahan* 2, no. 4 (2022): 140–49.

[51] Putra, Imaniyati, dan Nurhasanah, "Al-murâbahah li al-âmir bi al-syirâ: Studi Pemikiran Yûsuf al-Qaradhâwî dan Relevansinya dengan Fatwa DSN-MUI."

[52] Abdullah, Sururie, dan Mukhlas, "Analisis Putusan Hakim Pengadilan Agama Kabupaten Cirebon pada Prosedur Eksekusi Sita Jaminan Perkara Murabahah."

of contract formation in Islamic law. In the Indonesian context, banks enforce the promise to purchase to mitigate credit risk, but this practice raises questions about whether the transaction maintains its character as a genuine sale or becomes a conditional loan.[53]

Furthermore, *murabahah* has been criticized for dominating the portfolio of Islamic financial products in Indonesia, limiting the development of more participatory instruments such as *muḍārabah* (profit-sharing) or *mushārakah* (partnership). As emphasized by Yusuf al-Qardawi, *murabahah* should ideally serve as a transitional mechanism, not the default model. Overreliance on *murabahah* contracts may result in a risk-averse, debt-heavy financial environment that does not reflect the broader economic justice goals of Islamic finance.

Despite these concerns, *murabahah* continues to play a vital role in expanding access to sharia-compliant financing in Indonesia, particularly among small and medium-sized enterprises and underserved communities. Entities like Baitul Mal wat Tamwil (BMT) and sharia-based cooperatives, including Permodalan Nasional Madani (PNM) Mekaar Syariah, have modified the *murabahah* model to provide group financing schemes specifically aimed at empowering women micro-entrepreneurs.[54] While simplified and tailored for social empowerment, these schemes must still uphold sharia standards of ownership, transparency, and risk sharing to ensure their legitimacy.

Therefore, *Murābaḥah li al-Āmir bi al-Shirā'* is widely practiced in Indonesia due to its operational simplicity, legal certainty, and compatibility with existing regulatory frameworks governing Islamic banking. Nevertheless, its extensive application raises important questions concerning the extent to which contemporary practices fulfill not only the formal requirements of Islamic commercial law but also its substantive ethical objectives. To address these concerns, the compliance of Indonesian murabahah practices may be assessed through a structured analytical framework integrating comparative fiqh methodology and *maqāṣid al-sharīʿah*. The first level of analysis examines contractual validity (*ṣaḥḥat al-ʿaqd*) by evaluating the fulfillment of classical murabahah conditions, including genuine asset ownership,

[53] Wulandari dkk., "Contract agreement model for murabahah financing in Indonesia Islamic banking."

[54] Novianti, "A Qard-Based Microfinance under PNM Mekaar Syariah: A Legal Assessment from the Perspective of Positive Sharia Law and Classical Islamic Jurisprudence."

transfer of risk, transparency of cost and profit, and the absence of *ribā*, *gharar*, and prohibited legal stratagems (*ḥiyal*). The second level evaluates the realization of maqāṣid, particularly *ḥifẓ al-māl* (protection of wealth), *al-ʿadl* (justice), and *rafʿ al-ḥaraj* (removal of hardship), by assessing whether the transaction promotes fairness, financial inclusion, and sustainable economic activity. The third level employs a comparative fiqh approach by juxtaposing al-Qardawi's maqāṣid-oriented and pragmatic perspective with al-Misri's stricter adherence to classical legal standards, thereby enabling a balanced assessment between legal flexibility and doctrinal rigor. Such a framework facilitates a more comprehensive evaluation of murabahah financing, ensuring that its implementation in Indonesia advances not only regulatory compliance and institutional efficiency but also the broader objectives and moral vision of Islamic economic law.[55]

6. Synthesis: Normative Reflection and Policy Implications

The comparative analysis of Yusuf al-Qardawi and Rafiq Yunus al-Misri's legal thought on *Murābaḥah li al-Āmir bi al-Shirā'* offers a valuable lens through which to reflect on the normative dimensions and policy challenges of Islamic finance, particularly within the Indonesian context. Both scholars emphasize the importance of aligning financial practices with the core values and legal principles of Islam, yet they approach the matter through different methodological frameworks. While al-Qardawi prioritizes *maqāṣid al-sharī'ah* and functional adaptability, al-Misri stresses legal form, risk integrity, and faithful adherence to classical jurisprudence.[56] Synthesizing their perspectives provides both a theoretical foundation and a practical direction for developing more ethical and sustainable sharia economic systems.

From a normative perspective, both approaches converge on a fundamental point: Islamic finance must not merely avoid riba but must actively promote justice, transparency, and mutual benefit. This requires a sincere commitment not only to legal compliance but also to the ethical spirit of trade, as emphasized in the Qur'anic principle that "God has permitted trade and forbidden riba" (Qur'an 2:275). In this light, *Murābaḥah li al-Āmir bi al-Shirā'* should be more than a formal

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[55] Hamsir, Sastrawaty, dan Zainuddin, "The Dominance of Debt-Based Financing in Islamic Banking: Legal Challenges and Implications in Indonesia."

[56] Putra, Imaniyati, dan Nurhasanah, "Al-murâbahah li al-âmir bi al-syirâ: Studi Pemikiran Yûsuf al-Qaradhâwî dan Relevansinya dengan Fatwa DSN-MUI."

alternative to interest—it must reflect a substantive transaction involving genuine asset ownership, risk transfer, and value creation.

Yusuf al-Qardawi's position underscores the importance of flexibility in legal reasoning to meet the needs of contemporary Muslim societies. He defends *murabahah* financing as a necessary and practical tool to replace interest-based loans, especially where more complex partnership-based contracts may not yet be feasible. His support for the binding nature of the promise (*waʿd*) reflects a pragmatic orientation to modern commerce, where trust and contractual certainty are essential. However, his conditional endorsement is accompanied by a clear call to use *murabahah* as a transitional mechanism, urging financial institutions to gradually develop more participatory and socially responsible instruments.[57]

In contrast, Rafiq Yunus al-Misri's legal thought serves as an important reminder of the risks of over-formalism and legal mimicry. His critiques are particularly relevant to financial systems like Indonesia's, where *murabahah* dominates Islamic banking portfolios and is often executed with minimal risk assumption and only symbolic asset ownership. Al-Misri's insistence on full legal and economic compliance with classical conditions—ownership, possession, and voluntariness—pushes Islamic financial institutions to adopt greater rigor and self-scrutiny. His views challenge the industry to avoid reducing sharia compliance to documentation and instead focus on ethical and functional authenticity.[58]

In the Indonesian context, these normative concerns translate into important policy implications. First, regulatory bodies such as the Financial Services Authority (OJK) and the *Dewan Syariah Nasional - Majelis Ulama Indonesia* (DSN-MUI) must continue to refine their guidelines to close the gap between legal form and economic substance. For instance, oversight mechanisms should ensure that Islamic banks truly acquire and take possession of goods in *murabahah* transactions, rather than relying solely on contractual proxies or back-to-back arrangements with suppliers.

Second, transparency and consumer education should be prioritized. Many clients, especially in rural or microfinance settings, may not fully understand the mechanics of *murabahah* and may equate it with conventional credit. Ensuring

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[57] Wulandari dkk., "Contract agreement model for murabahah financing in Indonesia Islamic banking."

[58] Miṣrī, *Fa'idah al-Qard wa Nazariyyatuha al-Hadithah (Min Wijhati Nazri al-Islam).*

that clients are aware of their rights, obligations, and the nature of the transaction not only fulfills the requirement of informed consent (*tarāḍī*) but also strengthens the ethical legitimacy of Islamic finance.

Third, financial institutions should be encouraged—through incentives and innovation policies—to diversify their products beyond *murabahah* and develop more risk-sharing models such as *muḍārabah*, *mushārakah*, and *ijārah*. These instruments, while operationally more complex, better reflect the equity-based spirit of Islamic economics. Al-Qardawi's and al-Misri's shared critique of overreliance on murabahah highlights the urgency of such structural diversification.

Lastly, institutions such as Baitul Mal wat Tamwil (BMT) and PNM Mekaar Syariah, which provide *murabahah*-based group financing to women micro-entrepreneurs, should be supported with policy frameworks that ensure their practices uphold genuine asset ownership, fair pricing, and responsible profit margins. These institutions have the potential to actualize Islamic finance's social justice mission, particularly in empowering underserved and vulnerable communities.

Therefore, synthesizing the views of al-Qardawi and al-Misri offers a comprehensive framework that balances legal adaptability with doctrinal rigor, thereby strengthening both the normative and operational foundations of murabahah financing in Indonesia. Al-Qardawi's maqāṣid-oriented approach provides support for the continued use of murabahah as a practical instrument for expanding access to finance, promoting financial inclusion, and accommodating contemporary banking needs, which is reflected in the permissive orientation of DSN-MUI fatwas and the widespread adoption of murabahah by Indonesian Islamic banks. His emphasis on public benefit (*maṣlaḥah*) and economic facilitation (*taysīr*) is particularly relevant to regulatory efforts aimed at increasing the competitiveness and market penetration of Islamic financial institutions. In contrast, al-Misri's stricter adherence to classical fiqh principles serves as a critical evaluative standard for addressing persistent operational concerns, including constructive rather than actual asset ownership, excessive reliance on agency arrangements (*wakālah*), the transfer of commercial risk back to customers, and the tendency to structure murabahah in ways that closely resemble conventional debt-based lending. From this perspective, regulatory authorities and financial institutions must strengthen governance mechanisms, enhance transparency in asset acquisition and pricing, ensure genuine risk assumption by banks, and develop more rigorous sharia auditing procedures. A comparative integration of these two perspectives enables Indonesian Islamic finance to avoid the extremes of excessive formalism and unrestricted pragmatism, ensuring that murabahah remains not merely a legally compliant financing technique but a transaction that substantively advances the maqāṣid al-sharīʿah, particularly the protection of wealth (*ḥifẓ al-māl*), the realization of justice (*al-ʿadl*), the prevention of exploitation, and the promotion of equitable economic development.

D. CONCLUSION

This study has examined the legal structure of *Murābaḥah li al-Āmir bi al-Shirā'* and analyzed the contrasting yet complementary perspectives of two leading contemporary Islamic scholars: Yusuf al-Qardawi and Rafiq Yunus al-Misri. Both scholars affirm the permissibility of *murabahah* as a sharia-compliant mode of financing when properly implemented, yet they differ in their methodologies and emphasis. Al-Qardawi, guided by a *maqāṣid al-sharī'ah* framework, allows for flexibility in the application of binding promises and supports murabahah as a transitional tool toward more ideal Islamic financial models. Al-Misri, however, emphasizes strict adherence to classical jurisprudential requirements and expresses concern over the potential erosion of Islamic legal values when murabahah is implemented without real risk transfer or genuine ownership.

In the context of Indonesia, where *Murābaḥah li al-Āmir bi al-Shirā'* is widely practiced by Islamic banks, BPRS, and microfinance institutions, these scholarly insights highlight the importance of both legal rigor and ethical accountability. Regulatory frameworks and fatwas have enabled the institutionalization of *murabahah*, but challenges remain in ensuring that its implementation reflects the true spirit of sharia. Issues such as simulated ownership, formalistic transactions, and overreliance on debt-based contracts call for continuous reform and innovation.

A synthesis of al-Qardawi's and al-Misri's thought provides a constructive foundation for enhancing the integrity of sharia economic practices in Indonesia. Moving forward, Islamic financial institutions must not only meet procedural compliance but also strive to actualize the deeper values of justice, transparency, and social welfare that define the Islamic economic vision. In doing so, *Murābaḥah li al-Āmir bi al-Shirā'* can evolve from a pragmatic necessity into a model of ethical and responsible Islamic finance.

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