

## Participatory Financing Instruments Formula "Murabaha Model"

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Cite this paper as: Ahmed Mafhoum, Abdul Basit Al Baraka, (2025) Participatory Financing Instruments Formula "Murabaha Model". *Journal of Neonatal Surgery*, 14 (32s), 7658-7663.

### ABSTRACT

Crowdfunding is based on principles that frame the parties to the contractual process, including prohibiting contracts based on exploiting people and eating their money unjustly, such as dealing with usury, fraud, and obscenity in achieving unlawful profits.

After the legal provision for the establishment of participatory banks and their commencement of operation in the Kingdom of Morocco, people breathed a sigh of relief and were freed from the embarrassment caused by dealing with financial institutions that do not observe the provisions of Islamic Sharia.

Participatory banks can deal with six financing formulas as stipulated by the law, among these formulas is the Murabaha formula, which has gained popularity and acceptance among people due to the ease of dealing with it and the clarity of the terms of its contracts on the one hand, and on the other hand, the preference of banking institutions to deal with it because of the profits it achieves without great cost and because it carries less risk than dealing with other formulas.

This research aims to demonstrate the achievement of contractual justice between the banking institution and its customers when dealing with the Murabaha formula, where the most important results were reached:

- The purpose of the concept of justice is to give everyone his due right without injustice.
- Financial transactions are not fully enforceable and do not have an effect unless they achieve the principle of justice between the parties.
- The contract between the parties satisfies the societal contract based on security and stability, and whenever justice differs between the parties, the balance in society is disturbed.
- Achieve full acceptance and approval in the Murabaha contract between the bank and the merchant, and the bank and the customer (the purchase orderer), without any defect of will. This satisfaction may be expressed by acceptance and approval or by signing the contract concluded between the merchant and the bank or between the bank and the purchase orderer.

**Keywords:** Justice, Contract, Murabaha, Islamic Finance

### 1. INTRODUCTION

Sharia is Allah's justice among His servants, His mercy among His creation, His shade on earth, and His wisdom that indicates Him and the truth of the prophethood of His Messenger, may Allah bless him and grant him peace, in the most complete and best way. There is no doubt that all good in existence indicates it, and all evil is a reason for its loss and neglect of its indications. Its foundation and structure are based on the interests of the servants in this life and the afterlife, as Ibn Qayyim, may Allah have mercy on him, summarized in comprehensive, conclusive and decisive generalities when he said: "Sharia is all justice, all wisdom, and all interest. Every issue that deviates from justice to injustice, from mercy to its opposite, from interest to corruption, and from wisdom to futility, is not from Sharia and was introduced into it by interpretation."

### Importance of the topic:

The importance of the subject lies in the fact that it addresses the concept of contractual justice and tests the extent to which it is achieved through participatory financing formulas, and choosing the Murabaha formula as a model for that, given that the implementation of the Murabaha contract requires the presence of parties represented by the bank and then the customer in the normal Murabaha, while Murabaha for the purchase order requires the presence of two contracts independent of each other.

### Topic objectives:

The research objectives can be identified as follows:

- Defining the concept of contractual justice.
- Defining participatory financing.
- Understanding the most important forms of participatory financing, especially the Murabaha formula.
- Testing the ability of the Murabaha formula to achieve contractual justice.

### The problem of the subject:

To what extent has justice been achieved in Islamic finance contracts? In other words, has the principle of justice been taken into account in the formulas of participatory financing based on the Murabaha formula?

### Approved curriculum:

The appropriate descriptive analytical approach was adopted to simplify the research steps.

### Subject division:

I divided the topic into two sections: the first section included the linguistic and legal foundational framework, while the goals of doctrinal justice were explained in the second section.

The first section: Contractual justice in language and Islamic law If the contract theories indicate equality in rights and duties under the principle of consent between the parties to the contract without regularity, arbitrariness, or anything that affects the contract at its inception, through its conclusion, and when its effect is arranged, then the purpose of justice always applies at every stage without stating it formally, but it is implicitly established by it. In this section, it will be established linguistically and legally (the first requirement) and the principles of prohibition in financial transactions will be explained (the second requirement).

#### The first requirement: "The linguistic foundation of doctrinal justice."

A - Contract in language: Contract in language means binding and guarantee, as Al-Jawhari said: binding, tightening, guarantee and covenant, and it is also used to mean bringing together the parties<sup>1</sup>

B - Definition of the contract technically: The discussion of the contract among jurists and contractual theories has taken up a wide space. We will suffice with mentioning two definitions to clarify the meaning, as the contract has been defined by jurists as follows:

Ibn Zahra said: "Every legal transaction, whether it is concluded by one party or not, is concluded only by the words of two parties." Al-Zarqa said: "Everything that is issued by a person by his will, and the law establishes

legal consequences for it."

As for the definition of a contract in law, Al-Sanhouri explained it by saying: "The agreement of two or more wills to create, transfer, or terminate an

obligation."<sup>2</sup>

#### The second requirement: the legal basis for contractual justice

In the past, jurisprudence did not refer to the concept of contractual justice, perhaps because this function is the purpose of the agreement of the two wills, and to the best of my knowledge I have not found it except in this meaning, the balance between the obligations of the two parties, taking and giving, in a way that achieves complete equality between the two parties from the moment the contract is concluded until its full implementation.<sup>3</sup>

#### The third requirement: The principles of prohibition in financial transactions that support the principle of justice

We cannot imagine contractual justice in all contracts, companies and

<sup>1</sup>Al-Sahah Taj Al-Lugha and Al-Sahah Al-Lugha by Al-Jawhari, edited by: Ahmed Abdel Ghafour Attar, Dar Al-Ilm Lil-Malayin, Beirut, 4th edition, 1987, article on contract, vol. 2, p. 510.

<sup>2</sup>General Theory of Obligations (Contract Theory) by Al-Sanhouri, p. 79

<sup>3</sup>Restoring the Doctrinal Balance in Light of Financial Crises by Izzat Muhammad Abd al-Aziz Muhammad, Dar al-Fikr, 1st ed., 2013, p. 41.

Islamic financing as long as the principles of prohibition in Islamic law are not avoided in all stages of contracting, which are: usury, uncertainty, gambling, ignorance, monopoly, bribery, fraud, deception, extravagance, injustice, usurpation and theft... We will stop at some of them according to the situation and not in detail:

#### **First, the deception:**

Gharar in the language means danger in weight and meaning. The word gharar is not mentioned in the Holy Quran, but it was mentioned in the prophetic hadith. Abu Hurairah, may God be pleased with him, narrated that he said: "The Messenger of God, may God bless him and grant him peace, forbade the sale of pebbles and the sale of gharar."<sup>4</sup>

Gharar in Islamic jurisprudence: is the possibility, doubt or hesitation, not<sup>5</sup> knowing whether it will happen or not, and Gharar in it is ignorance in the contract that leads to dispute, as it could be in the formula or the contracted upon, and this ignorance leads to one of the contracting parties spending their money on what is not deserved or what is not desired, and the Sharia's consideration of this matter is evidence of its interest in the principle of contractual justice even if it does not explicitly state it.

As for the second text of the hadith that explicitly states the prohibition of uncertainty, it is what Al-Bukhari narrated in the prohibition of selling fruit before it ripens, on the authority of Abdullah bin Omar, may God be pleased with them both: that the Messenger of God, may God bless him and grant him peace, said: (Do not sell fruit until it ripens, and do not sell fruit for fruit)<sup>6</sup>.

In conclusion, all these contracts lead to ignorance and uncertainty in the subject of the contract, and therefore it is not possible to know the true value of the money that the contracting party will spend because of it, and this leads to a disruption in the principle of justice between the contracting parties. Thus, the Sharia worked to block every pretext that leads to a disruption in justice between the contracting parties. The prohibition of all these contracts that lead to conflict and disagreement is nothing but an affirmation by the Lawgiver of the importance and authenticity of this principle.

#### **The second section: The purpose of Murabaha, the one who orders the purchase**

Economic and social development in every country requires the existence of real financing sources and investment assets in response to the needs of individuals and the goals of society in renaissance, development and stability. The Murabaha formula that Islamic and participatory banks deal with is a means of achieving the goal of individuals and the nation in development, according to legal procedures, Sharia controls and ethical principles that must be adhered to by the contracting parties; banking institutions and the customer, so that the desired goal of this transaction is achieved first and so that people's transactions and security are stable. In this context, any error or defect in the financing process by the banking institution will lead to a disruption of the purpose of justice between the parties, and the more the institution adheres to its reference and the spirit of its Sharia philosophy, there is no doubt that it will achieve the desired justice in all contracts.

#### **First requirement: Analysis of the Murabaha steps in the publication of the Moroccan Bank's governor**

##### **First, the concept of Murabaha:**

Murabaha contract<sup>7</sup> According to Article 58 of Law 103.12, "Every contract that sells, under the direction of a participatory bank, a specific movable or immovable property owned by its client at the cost of its acquisition plus a profit margin agreed upon in advance." The term "murabaha contract" for the purchaser means: the bank's implementation of the contracting party's request on the basis of the former purchasing what the latter requests with cash paid by the bank – in whole or in part – in exchange for the requester's commitment to purchase what he ordered and according to the profit agreed upon at the outset.<sup>8</sup>

Its formula: The client says To the bank: Buy this commodity and I promise to buy it from you with a known increase at a specified time. Some contemporary scholars called it or the sale of review for the one who promises to buy" or "banking murabaha" or "complex murabaha" "promise sale" to distinguish it from the sale of murabaha (simple) which most jurists have permitted, and they have elaborated on its conditions and terms<sup>9</sup>

<sup>4</sup> Muslim, Sahih Muslim, previous reference, Book of Sales, Chapter on the Invalidity of the Sale of a Pebble and the Sale in Which There is Deception, 3/1153, 1513.

<sup>5</sup> Rafiq Younis Al-Masry, Jurisprudence of Financial Transactions, Dar Al-Qalam, Damascus, 4th ed., 2012, p. 137.

<sup>6</sup> Al-Bukhari, Sahih Al-Bukhari, previous reference, Book of Sales, Chapter on the sale of Muzabanah, which is the sale of fruit, the sale of fruit for fruit, the sale of raisins for grapes, and the sale of 'arayah, 3/75, No. 2183.

<sup>7</sup> Murabaha in the language: means: profit, growth and increase. It is said: I gave you profit, meaning I gave you profit.

<sup>8</sup> Abu Zaid, Sale of Promise, Murabaha in Islamic Banks, previous reference, Al-Masry, Rafiq, 82, Al-Masry, Rafiq, Sale of Murabaha to the Purchaser in Islamic Banks, previous reference, 845.

<sup>9</sup> Simple Murabaha is one of the trust sales that the jurists have stated is permissible. Its formula is: The owner says to the buyer: This commodity was built at such-and-such a price and expenses - if he owned it by purchasing it - or he says: This commodity is worth such-and-such - if he owned it without purchasing it as a gift or inheritance or the like - and I want to sell it to you for such-and-such a profit. The buyer accepts, and this is called a Murabaha sale. Its evidence: A month of trade was presented to Uthman ibn Affan during the reign of Abu Bakr, may Allah be

Murabaha for the purchaser has many forms, the most prominent of which are two common forms: the first: with the statement that the customer is obligated to buy what he promised to buy from the bank, and the second: without obligating him to fulfill his promise and leaving him the option to carry out the purchase or abandon it<sup>10</sup>. Through the above definition of Murabaha, we can call it simple or ordinary Murabaha, in which the seller engages in trade, and the commodity is often available to him. There is another type of Murabaha in which the seller does not engage in trade, and the commodity is often not available, but rather buys it after the requester promises it, and this is what is called Murabaha of the purchase order. The circular of the Governor of the Moroccan Bank No. 1/17 issued on January 27, 2017, regarding the technical specifications of Murabaha, Musharaka, Mudarabah and Salam products, as well as the methods of presenting them to customers, has been explained in the provisions of Murabaha as follows:

Article 3: A Murabaha contract means a contract whereby an institution sells a specific movable or immovable property in its possession...

This article states that Murabaha is only done through a contract that meets the conditions of justice and between the parties, the capacity to contract is fulfilled, and with clear costs free from fraud, deception and injustice, and in ownership to avoid the institution selling what it does not own, which is prohibited by Sharia.

Article 4: "Ownership of the property is transferred by concluding the contract and enabling it in reality or by law."

This article states that the property is only transferred through a fair sale concluded with all the pillars and conditions and free from impediments to transactions. It also indicates the meaning of enabling in reality or by law, which is the purpose of contracts to benefit and enable from the bad sold item to avoid anything that would lead people to eat each other through fictitious transactions.

Article 5: "Murabaha is not permissible in monetary units and the like if the price is paid in a deferred manner, and also in gold and silver if they are sold for gold or silver."

The article confirms the prohibition of usury, taking and giving, in the sale of money, which is prohibited by Sharia, and the institution cannot sell what Sharia has prohibited.

Article 6: "The sale price is determined in the Murabaha contract, whether it is related to the cost of acquisition or the profit margin, and each of them must be fixed and an increase in them is prohibited."

The article clearly specifies the price in order to achieve the principle of justice and prohibits an increase in the price in any form of increase.

Article 7: "The customer's sale price may be paid in one payment or through multiple payments, according to the terms and conditions agreed upon between the two parties to the contract."

The customer may, on his own initiative and without compensation, make early or partial payment of the remaining sale price, taking into account the conditions specified in the sales contract.

In the event of early payment, the institution may waive part of the profit margin in favor of the customer..."

This article specifies the method of payment to avoid what may result in injustice and the unjust consumption of people's money, whether payment in one payment or early payment in whole or in part. The institution may also waive part of the profit margin in the event of early payment. Articles 8 and 9 each provide matters that achieve justice in guarantees for the benefit of the institution in order to avoid injustice. In the event of non-payment, the article distinguishes between suspension with and without an excuse.

### **The second requirement: Murabaha and its objectives**

Among the rulings related to sales of trusts in general: If the betrayal appears in the description of the price, such as buying something on credit and then selling it for a profit on the first price, and he did not state that he bought it on credit or sold it as a trust, and he did not state, and then the buyer found out, then he has the option by consensus, if he wants to take it or if he wants to return it, because the profit is a contract built on trust, and it is necessary to state it, and its protection from betrayal is conditional by implication, so its loss necessitates the option, like the loss of safety from defect. If the betrayal appears in the amount of the price, such as he said: I bought it for ten and I appointed you for what I appointed, then it became clear that he had bought it for nine, then there is a difference of opinion regarding its ruling, in two related issues, in terms of establishing the option or not, and in terms of how to do justice to the buyer, and scholars have differed on it in four opinions that are studied in their proper places. This is regarding the effect of betrayal in trust contracts in general, and

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pleased with him. The merchants came to him to buy, so he said to them: How much profit do you make me on my purchases from Ash-Sham? They said: Ten is twelve. He said: They gave me more. They said: Ten is fourteen. He said: They gave me more. They said: Ten is fifteen. He said: They gave me more. They said: Who gave you more, since we are the merchants of Madinah? He said: Allah gave me more for every dirham ten (Whoever brings a good deed will have ten times the like thereof) [Al-An'am: 160]. Then he made them witness that it was for Allah

<sup>10</sup>Abu Zaid, Murabaha sale in Islamic banks, previous reference, 82, Al-Masry, Murabaha sale to the purchase orderer in Islamic banks, previous reference, p. 45.

betrayal is one of the signs of imbalance of justice between the contracting parties, and through the effect of betrayal on the trust contract, it can be said: that imbalance of justice in these contracts does not affect the validity or legitimacy of the contract, but rather the option is proven to the buyer absolutely in one of the statements, or that we correct the contract without saying that it is invalid due to the betrayal that occurred in it. The following can be presented with some signs that show the availability of contractual balance in the Murabaha contract, such as:

Achieve full acceptance and approval in the Murabaha contract between the bank and the merchant, and the bank and the customer (the purchase orderer), without any defect of will, and this satisfaction may be expressed by the acceptance and approval or by signing the contract concluded between the merchant and the bank or between the bank and the purchase orderer.

But is the Murabaha contract considered a contract of adhesion such that the adhesion is preferred in favor of the bank over the customer's interest?

Some contemporaries have indicated that the Murabaha contract for the purchase orderer is considered a contract of adhesion due to the customer's urgent need for the commodity, and his inability to buy it in cash, which forces him to accept the bank's terms in terms of the profit margin that it determines on the one hand, and on the other hand, the customer is not allowed to discuss the terms of the contract models prepared in advance by the bank, and the axes of negotiation that take place between the customer and the bank are very limited, represented by the financing period and guarantees.

#### **?Availability of eligibility<sup>11</sup>/**

The capacity of the contracting parties is available. It is clear that Murabaha as a contract requires the same conditions as other contracts regarding the capacity of the contracting parties to bind and commit.

? The conditions are available in the subject of the contract and there is nothing that leads to a dispute. It is not valid to sell what does not exist, nor what is uncertain, and the contract is not valid for what cannot be delivered. It is clear that the Murabaha contract for the purchaser has met these conditions in the subject of the contract, and therefore it cannot be said that there is an imbalance in it due to the failure to meet the conditions of the subject of the contract.

? Obligations of the contracting parties: The buyer (the purchase orderer) is obligated to pay the price according to what was agreed upon in installments in the contract, and the bank is obligated to deliver the contracted item with a guarantee of hidden defects in it. Although the buyer is obligated to pay the price of the commodity, the bank does not have the right to increase the price if the customer is unable to pay. This was included in the decision of the International Islamic Fiqh Academy held in the sixth conference session in Jeddah, Kingdom of Saudi Arabia, Sha'ban 1410 AH 1990 AD after reviewing the discussions on installment sales: If the debtor buyer is late in paying the installments after the specified date, it is not permissible to oblige him to pay any increase on the debt with a prior condition or without a condition, because this is forbidden usury.<sup>12</sup>

In conclusion to this topic, the most important conclusions and results can be monitored in the following:

? The purpose of the concept of justice is to give each person his right without injustice

? Financial transactions are not fully implemented and do not have their effect unless they achieve the principle of justice between the parties.

The contract between the parties satisfies the societal contract based on security and stability, and whenever justice differs between the parties, the balance in society is disturbed

There are features that indicate the availability of contractual balance in the Murabaha contract, the most important of which are:

- The full acceptance and approval were achieved in the Murabaha contract between the bank and the merchant, and the bank and the customer (the purchase orderer), without the presence of any defect in the will, and this satisfaction may be expressed by the acceptance and approval or by signing the contract concluded between the merchant and the bank or between the bank and the purchase orderer.

The Murabaha contract is considered a contract of adhesion, whereby the adhesion is more in favor of the bank than the customer, given the customer's urgent need for the commodity and his inability to purchase it in cash, which forces him to accept the bank's terms in terms of the profit margin that it determines on the one hand, and on the other hand, the customer is not allowed to discuss the terms of the contract models prepared in advance by the bank, and the axes of negotiation that take place between the customer and the bank are very limited, represented by the financing period and guarantees. - The conditions must be met in the subject of the contract and there must be nothing that leads to a dispute, as it is not permissible

<sup>11</sup> Sabr, Nidaa Khaled Ali, The Specificity of the Legal Regulation of the Murabaha Contract for the Purchase Orderer, Master's Thesis Supervised by Dr. Ghassan Khaled, College of Graduate Studies, An- Najah National University, 2015, 51.

<sup>12</sup> Resolution No. 51 (6/2) regarding installment sales.



to sell what does not exist, nor what is deceptive, and the contract is not valid for what cannot be delivered. It is clear that the Murabaha contract for the purchase orderer has met these conditions in the subject of the contract, and therefore it cannot be said that there is an imbalance in it due to the failure to meet the conditions of the subject of the contract. - Obligations of the contracting parties: The buyer (the purchase orderer) is obligated to pay the price according to what was agreed upon in installments in the contract, and the bank is obligated to deliver the contracted item with a guarantee of hidden defects in it.

- Although the buyer is obligated to pay the price of the commodity, the bank does not have the right to increase the price if the customer is unable to pay. If the debtor buyer is late in paying the installments after the specified date, it is not permissible to oblige him to pay any increase on the debt with or without a prior condition, because that is forbidden usury.
- As for the imbalance of contractual justice in the Murabaha contract for the purchase orderer, it may arise from the doubts raised by scholars who forbid or say that Murabaha sales are not permissible.

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