

## Legal Review and DSN-MUI *Fatwa* on the Prospects for Developing Sharia Financing Contracts in Sharia KPR Products of BPRS

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### Abstract:

This research aims to analyze the prospects for developing sharia financing contracts in sharia KPR products of BPRS. This research uses qualitative, descriptive, and field research methods. The data sources for this research are the results of observations and documentation of legal review and DSN-MUI *fatwa* regarding sharia financing contracts for sharia KPR products of BPRS. The data obtained was then processed through the process of editing and organizing the data, then analyzed using the deduction method. The results, based on SEOJK, it is possible to develop sharia financing contracts for sharia KPR products of BPRS using *salam* and IMBT contract. Meanwhile, based on comparison between previous research and theoretical analysis in the form of DSN-MUI *fatwa*, it is possible to develop sharia financing contracts for sharia KPR products of BPRS using IMFD and MMBT contract. The conclusion, in general, sharia KPR products of BPRS are aimed to purchasing property, renovating property, building property, purchasing property as well as renovating, or take over financing from another bank that is similar to the KPR products, using *murabahah*, *istishna'*, or MMQ contract. In connection with the purposes of sharia KPR products of BPRS, it is possible for BPRS to be able to develop new contracts, namely *salam*, IMBT, IMFD, or MMBT contract. Meanwhile, for take over financing can use *qardh* is continued with *bai'* and *murabahah* contract, *bai'* and *syirkah al-milk* is continued with *murabahah*, *qardh* and *ijarah* separately, *qardh* is continued with IMBT, MMQ, *hawalah bil ujah*, IMBT, *mudharabah*, or *musyarakah*.



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## Introduction

Financing is the provision of funds or bills that are equated with it in the form of: (1) Profit sharing transactions in the form of *mudharabah* and *musyarakah*; (2) Rental transactions in the form of *ijarah* or rental purchase in the form of *ijarah muntahiyah bi tamlik* (IMBT); (3) Sales and purchase transactions in the form of *murabahah*, *salam*, and *istishna'* receivables; (4) Lending and borrowing transactions in the form of *qardh* receivables; and (5) Service rental transactions in the form of *ijarah* for multi-service transactions; based on an agreement or deal between the Islamic bank and/or Islamic Business Unit (UUS) and another party that requires the party financed and/or given funding facilities to return the funds after a certain period of time with a return of *ujrah*, without a return, or profit sharing (Indonesia, 2008).

Based on the intended use of the financing, one of them is consumer financing, which is financing provided to customers to finance consumer goods. This financing is generally for individuals, such as for the purchase of a home or a car for personal use. Repayment of the financing, in the form of installments, comes from salary or other income, not from the object being financed (Indonesia, 2014a) (Ryandono & Wahyudi, 2018).

Definitively, consumption is an individual's need for goods and services that are not used for business purposes. Banks that provide financing facilities in the consumer segment are called consumer banking, a banking activity in which the products and services provided are aimed at meeting the needs of individual customers with stable income levels. Islamic banks are permitted to accommodate customer consumption needs as long as they comply with established sharia principles. Sharia principles are Islamic legal principles in banking activities based on *fatwa* issued by institutions authorized to issue *fatwa* in the sharia field (Ryandono & Wahyudi, 2018).

Consumption needs can be divided into primary (basic or basic) and secondary needs. Primary needs are basic necessities, whether in the form of goods (food, drink, and clothing) or services (basic education and medical treatment). Secondary needs are additional completeness, quantitatively or qualitatively higher or more luxurious than primary needs, whether in the form of goods (precious metals, houses, and vehicles) or in the form of services (higher education, *hajj*, and *umrah*). In general, Islamic banks limit financing to the fulfillment of certain goods that can be accompanied by proof of legal ownership (houses and motor vehicles), which then serve as the main collateral. Meanwhile, to fulfill service needs, Islamic banks require collateral other goods that can be tied as collateral. The source of repayment for this financing comes from other sources of income and not from the exploitation of the goods financed by the financing facility. Consumptive financing is commonly used to

fulfill secondary needs. Primary needs, however, generally cannot be met with consumptive financing (Antonio, 2001).

Home ownership credit / financing, hereinafter abbreviated as KPR, is credit or financing for home ownership issued by the implementing bank (KemenPUPR, 2019). KPR is a credit/financing facility provided by banks to individual customers who wish to purchase or renovate a home. In Indonesia, there are currently two types of mortgages. *First*, subsidized mortgages are intended for low and middle-income individuals to meet housing needs or improve existing homes. The subsidies provided include subsidies to reduce the cost of the loan/financing and subsidies to increase funds for home construction or repairs. This subsidized credit/financing is regulated separately by the government, so not everyone who applies for the loan/financing is eligible for this facility. Generally, the government limits the subsidy on the applicant's income and the maximum amount of the loan/financing provided. *Second*, non-subsidized mortgages are intended for all individuals. Mortgage requirements are determined by the bank, so the amount of the loan/financing is determined in accordance with the bank's policy (OJK, 2019b).

Sharia KPR financing is the provision of financing to customers for home ownership using contracts based on sharia principles (BI, 2012). Sharia KPR can be in the form of short, medium or long term financing (OJK, 2019a). Short-term financing is a financing facility with a repayment period to the bank of no more than 1 (one) year. Medium-term financing is a financing facility with a repayment period to the bank of more than 1 (one) year up to 3 (three) years. Long-term financing is a financing facility with a repayment period to the bank of more than 3 (three) years (Indonesia, 2014b). Islamic banking business activities that are based on sharia principles, among other things, are business activities that do not contain elements (Indonesia, 2008): *Riba*, which is the addition of income illegally (*batil*), including in transactions for the exchange of similar goods of different quality, quantity, and time of delivery (*fadhil*), or in lending and borrowing transactions that require the customer receiving the facility to return the funds received in excess of the principal loan due to the passage of time (*nasi'ah*); *Maisir*, which is a transaction that is dependent on an uncertain situation and is based on chance; *Gharar*, which is a transaction whose object is unclear, not owned, its whereabouts are unknown, or cannot be delivered at the time the transaction is carried out unless otherwise regulated in sharia; *Haram*, which is a transaction whose object is prohibited in sharia; *Zalim*, which is a transaction that causes injustice to the other party.

In general, sharia KPR products of BPRS are aimed at: (1) Purchasing property: (a) New property (ready stock), in the form of residential houses and shop houses; (b)

Old property (second hand), in the form of residential houses and shop houses; (c) Purchasing building materials and land for new indent property with the object being a residential house; (2) Property renovation, excluding labor costs; (3) Land plot development (personal / individual property development where it is not from a developer / purchasing indent property) in the form of purchasing building materials, excluding land and labor costs, for the purpose of building a residential house; (4) Purchasing ready property and renovation, excluding labor costs; (5) Taking over financing from another bank of the same type as the KPR product, with a maximum financing ceiling of the last outstanding at the originating bank.

This research attempts to analyze the prospects for developing sharia financing contracts for sharia KPR of BPRS. Based on previous research, there are several models for developing sharia financing contracts for sharia KPR products, including using *murabahah* contract (Sodik et al., 2023), *murabahah bi al-wakalah* contract (Hubbi & Hrp, 2023), *istishna'* contract (Rhosyidy, 2019), *istishna' paralel* contract (Mualimin, 2021), MMQ contract (Mitasari et al., 2023), *musyarakah wal ijarah* contract (Indriani, 2021), IMBT contract (Mulyana, 2021), and IMFD PPR-Inden contract (Ulfi, 2021).

The urgency of conducting this research is, *first*, by having various variations of contracts, it will give rise to many variations of products, so that customers have more options to be able to meet their needs for sharia KPR products (Soenjoto, 2018). *Second*, in general, BPRS that already have sharia KPR products are still limited in the use of *murabahah* contract (DSN-MUI, 2000a), *istishna' paralel* contract (DSN-MUI, 2000c) (DSN-MUI, 2000e), and MMQ contract (DSN-MUI, 2000d) (DSN-MUI, 2008) only, so this research is important in providing insight to BPRS regarding the prospects for developing sharia financing contracts for sharia KPR products.

## Methodology

This research is an inseparable part of the previous year's research entitled "*Analysis of Sharia Compliance in the Implementation of Sharia KPR iB Hebat Product at BPRS Dana Amanah Surakarta*" (Sup et al., 2023). This research is important to be used as a basis for conducting research entitled "*Prospects for the Development of Sharia Financing Contract on Sharia KPR iB Hebat Product at BPRS Dana Amanah Surakarta*" (Sup et al., 2024). This research uses qualitative, descriptive, and field research methods (Sup, 2021c) (Ghozali et al., 2024). The data source for this research is the results of observations and documentation of legal studies and DSN-MUI *fatwa* regarding sharia financing contracts for KPR sharia products of BPRS. (Sup, 2021a). The data obtained is then processed through a data editing and organizing process, then analyzed using the deduction method (Sup, 2020) (Sup, 2021b) (Retnowati et al., 2022). Data analysis

is carried out continuously from beginning to end (Sup & Masruri, 2023) (Hartanto & Sup, 2022) (Hartanto et al., 2021). The data analysis process includes data interpretation, language translation, word editing, and arranging it logically and systematically, so that the resulting description can become a complete concept that is easy to understand (Sup & Suhendi, 2022) (Hartanto & Sup, 2021).

## Results and Discussion

Regulations for the implementation of BPRS products refer to Financial Services Authority Regulation Number 25/POJK.03/2021 concerning the Implementation of BPR and BPRS Products (OJK, 2021b) and Circular Letter of the Financial Services Authority Number 10/SEOJK.03/2023 concerning the Implementation of BPRS Products (OJK, 2023).

BPRS products are grouped into, *first*, basic products, namely products, services, and/or other activities attached to the BPRS business license, in the form of fund collection, fund distribution, fund placement, and/or other basic activities. *Second*, advanced products, namely products, services, and/or other activities to support BPRS business based on information technology, related to the implementation of activities or products of non-bank financial services institutions or influencing the assessment of BPRS risk profiles, and which require permits and/or approvals from other authorities. The OJK can determine advanced products to be basic products based on certain considerations. The determination of advanced products to be basic products, among others, takes into account the level of risk of the product in question.

In the case of a BPRS product that has never been previously provided by the BPRS concerned, or has been previously provided by the BPRS concerned but product development has been carried out resulting in changes to the product's inherent risk and the BPRS's risk profile, the BPRS product is categorized as a new product. The criteria for the new product category are determined by the BPRS and become part of the written policies and procedures for product implementation. The BPRS conducts a self-assessment of the product development plan to be implemented in accordance with the established criteria. The OJK may determine a different assessment based on the results of the evaluation of the BPRS's self-assessment.

BPRS must include the implementation of new products in its business plan. OJK may request a BPRS to provide a comprehensive explanation of its new product implementation plan, including the objectives of the new product implementation, an analysis of the new product implementation mechanism, and the readiness of the new product implementation plan, including if it is implemented through collaboration with a third party.

The inclusion of new product implementation plans in BPRS business plans is carried out in accordance with Financial Services Authority Regulation Number 15/POJK.03/2021 concerning Business Plans for BPR and BPRS (OJK, 2021a) and Financial Services Authority Circular Letter Number 30/SEOJK.03/2021 concerning BPRS Business Plan (OJK, 2021c).

Business plan is a written document that describes the development plan and business activities of a BPRS for a specific period of time, along with strategies for realizing the plan according to the targets and timeframes set. BPRS are required to prepare a realistic business plan annually; it must be prepared by the Board of Directors and approved by the Board of Commissioners; and must reflect the direction and policies for BPRS business development in the short term (for a period of 1 year), medium term (for a period of 3 years), and long term (for a period of 5 years). The direction and policies for BPRS business development in the long term include the BPRS's vision and mission.

BPRS must develop a business plan that takes into account external and internal factors that could impact the BPRS's business continuity, as well as the principles of prudence and sound banking. In addition to these factors, the BPRS must develop a business plan that adheres to sharia principles. The Board of Directors is required to implement the business plan effectively. The Board of Directors is required to provide an explanation of the business plan to BPRS shareholders and all levels of the BPRS organization. The Board of Commissioners is required to oversee the implementation of the business plan.

The business plan must at least contain an executive summary, business strategy and policies, financial report projections, target ratios and financial items, fund raising plan, fund distribution plan, capitalization plan, information technology development and procurement plan and human resource development, product issuance plan and implementation of new activities for BPRS, office network development and/or change plan, and other information.

BPRS ensures that the implementation of risk management, including compliance with sharia principles and the implementation of governance for product implementation, is carried out in accordance with, among others, the POJK concerning the implementation of risk management for BPRS, namely Financial Services Authority Regulation Number 23/POJK.03/2018 concerning the Implementation of Risk Management for BPRS (OJK, 2018a) and Circular Letter of the Financial Services Authority Number 10/SEOJK.03/2019 concerning the Implementation of Risk Management for BPRS (OJK, 2019c), and the Financial Services Authority Regulation concerning the implementation of governance for BPRS, namely Financial Services

Authority Regulation Number 24/POJK.03/2018 concerning the Implementation of Governance for BPRS (OJK, 2018b), Financial Services Authority Circular Letter Number 13/SEOJK.03/2019 concerning the Implementation of Governance for BPRS (OJK, 2019d), and Financial Services Authority Circular Letter Number 9/SEOJK.03/2022 concerning Amendments to Financial Services Authority Circular Letter Number 13/SEOJK.03/2019 concerning Implementation of Governance for BPRS (OJK, 2022).

BPRS must have written policies and procedures in product implementation, which at least include determining business benefits and customer needs for the product, identifying all risks inherent in the product (credit risk, operational risk, compliance risk, liquidity risk, reputation risk, and strategic risk) and their mitigation, recording methods and accounting information systems for the product, establishing criteria and third-party evaluation processes (if the product implementation is carried out through cooperation), and methods for measuring and monitoring risks for BPRS products as stated in the systems and procedures. DPS must evaluate BPRS policies and procedures regarding product implementation to ensure they are in accordance with sharia principles. BPRS must periodically review and update written policies and procedures in product implementation, in accordance with the policies of each BPRS by considering internal factors (new product development plans, changes in business strategy direction, and findings regarding weaknesses or deviations, including deviations from sharia principles) and external factors (adjustments to financial accounting standards, *fatwa* issued by institutions authorized to issue *fatwa* in the sharia field, and changes in statutory provisions).

Regarding risk management, it refers to Financial Services Authority Regulation Number 23/POJK.03/2018 concerning the Implementation of Risk Management for BPRS (OJK, 2018a) and Circular Letter of the Financial Services Authority Number 10/SEOJK.03/2019 concerning the Implementation of Risk Management for BPRS (OJK, 2019c).

The mechanism for implementing new products, the BPRS DPS submits an opinion regarding new products, which among other things refers to *fatwa* and/or statements of sharia compliance issued by institutions that have the authority to determine *fatwa* in the sharia sector and provisions governing the implementation of sharia principles (OJK, 2021b) (OJK, 2023) (OJK, 2023).

Certain considerations for adjusting the new product implementation plan include, among others, the product implementation aims to support the implementation of government programs or other authority policies, the new product does not significantly affect operational activities and/or affect the performance of

BPRS, and/or is a form of follow-up to financial industry policies and/or implementation of new *fatwa* issued by DSN-MUI. Adjustments to the product implementation plan include the addition of new product implementation plans and/or improvements to new product implementation plans that were previously listed in the business plan.

Based on certain considerations, a BPRS may adjust its new product implementation plan beyond what has been stated in its business plan, no later than 1 month prior to the new product implementation, along with the reasons for the adjustment. OJK may request the BPRS to make improvements to the new product implementation plan adjustments. OJK has the authority to approve or disapprove the new product implementation plan adjustments submitted by the BPRS no later than 10 working days after receiving complete documents (OJK, 2021b).

Adjustments to the new product implementation plan can be submitted to OJK, along with changes to the business plan, which must be submitted no later than the end of June of the current year in accordance with Financial Services Authority Regulation Number 15/POJK.03/2021 concerning Business Plans for BPR and BPRS (OJK, 2021a) and Financial Services Authority Circular Letter Number 30/SEOJK.03/2021 concerning BPRS Business Plan (OJK, 2021c), or after the submission period for changes to the current year's business plan, in accordance with Financial Services Authority Regulation Number 25/POJK.03/2021 concerning the Implementation of BPR and BPRS Products (OJK, 2021b) and Circular Letter of the Financial Services Authority Number 10/SEOJK.03/2023 concerning the Implementation of BPRS Products (OJK, 2023). OJK's approval of the document for adjusting the new product implementation plan does not constitute approval for the implementation of the new product.

Based on Attachment I, Circular Letter of the Financial Services Authority Number 10/SEOJK.03/2023 concerning the Implementation of BPRS Products (OJK, 2023), the basic product which is a fund distribution activity is *murabahah* financing, *istishna'* financing, *salam* financing, *mudharabah* financing, *musyarakah* financing, *musyarakah mutanaqishah* (MMQ) financing, *ijarah* financing, *ijarah muntahiyah bi tamlik* (IMBT) financing, multi-service financing, *qardh* financing, financing services for organizing the *hajj* pilgrimage, sharia factoring, gold-backed *qardh* financing, syndicated financing, refinancing, debt/financing transfer, executing financing, channeling financing (forward financing).

Thus, based on Attachment I, Circular Letter of the Financial Services Authority Number 10/SEOJK.03/2023 concerning the Implementation of BPRS Products (OJK, 2023), development of sharia financing contracts for sharia KPR products can possibly



use *salam* contract (DSN-MUI, 2000b) and IMBT contract (DSN-MUI, 2002). Meanwhile, based on a comparison between previous research and theoretical analysis in the form of the DSN-MUI *fatwa*, the development of sharia financing contracts for sharia KPR products is possible using the IMFD contract (DSN-MUI, 2016a) (DSN-MUI, 2016b) and MMBT contract (DSN-MUI, 2019). If typologized (Sup et al., 2022), therefore, the development of sharia financing contracts for sharia KPR products of BPRS can be classified as follows: (1) Sharia KPR financing is based on the principle of buying and selling, namely *murabahah* financing, *istishna'* financing, and *salam* financing; (2) Sharia KPR financing is based on the principle of leasing, namely IMBT financing and IMFD financing.; (3) Sharia KPR financing is based on the principle of cooperation, namely MMQ financing and MMBT financing. Thus, the prospects for developing sharia financing contracts for sharia KPR products of BPRS are as follows:

**Tabel 1. The Prospects for Developing Sharia Financing Contracts in Sharia KPR Products of BPRS**

No	Product Purposes	The Contract Used (o)			Prospects for Contract Development (v)			
		SEOJK and DSN-MUI <i>Fatwa</i>			SEOJK and DSN-MUI <i>Fatwa</i>		DSN-MUI <i>Fatwa</i>	
		<i>Murabahah</i>	<i>Istishna'</i>	MMQ	<i>Salam</i>	IMBT	IMFD	MMBT
1	Purchasing new property (ready stock), in the form of residential houses and shop houses	o		o		v		v
2	Purchasing old property (second hand), in the form of residential houses and shop houses	o		o		v		v
3	Purchasing building materials and land for new indent property with the object being a residential house	o	o	v	v	v	v	
4	Property renovation, excluding labor costs	o		v		v	v	
5	Land plot development (personal / individual property development where it is not from a developer / purchasing indent property) in the form of purchasing building materials, excluding land and labor costs, for the purpose of building a residential house	o	o	v	v	v	v	
6	Purchasing ready property and renovation, excluding labor costs	o		v		v	v	

7	Taking over financing from another bank of the same type as the KPR product, with a maximum financing ceiling of the last outstanding at the originating bank			o	Debt/financing transfer: a. <i>Qardh</i> is continued with <i>bai'</i> and <i>murabahah</i> ; b. <i>Bai'</i> and <i>syirkah al-milk</i> is continued with <i>murabahah</i> ; c. <i>Qardh</i> and <i>ijarah</i> separately; d. <i>Qardh</i> is continued with IMBT; e. MMQ; f. <i>Hawalah bil ujah</i> ; g. IMBT; h. <i>Mudharabah</i> ; or i. <i>Musyarakah</i> .
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Source: Data Processed

## Conclusion

The prospects for developing sharia financing contracts for sharia KPR products of BPRS are as follows.: (1) Purchasing property: (a) New property (ready stock), in the form of residential houses and shop houses, can use *murabahah*, MMQ, IMBT, or MMBT contract; (b) Old property (second hand), in the form of residential houses and shop houses, can use *murabahah*, MMQ, IMBT, or MMBT contract; (c) Purchasing building materials and land for new indent property with the object being a residential house, can use *istishna'*, *salam*, or IMFD contract (in the context of MMQ or IMBT); (2) Property renovation, excluding labor costs, can use *istishna'* or *salam* contract; (3) Land plot development (personal / individual property development where it is not from a developer / purchasing indent property) in the form of purchasing building materials, excluding land and labor costs, for the purpose of building a residential house, can use *istishna'*, *salam*, or IMFD contract (in the context of MMQ or IMBT); (4) Purchasing ready property and renovation, excluding labor costs, can use *istishna'*, *salam*, or IMFD contract (in the context of MMQ or IMBT); (5) Taking over financing from another bank of the same type as the KPR product, with a maximum financing ceiling of the last outstanding at the originating bank, can use this contract: (a) *Qardh* is continued with *bai'* and *murabahah*; (b) *Bai'* and *syirkah al-milk* is continued with *murabahah*; (c) *Qardh* and *ijarah* separately; (d) *Qardh* is continued with IMBT; (e) MMQ; (f) *Hawalah bil ujah*; (g) IMBT; (h) *Mudharabah*; or (i) *Musyarakah*.

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