

IS ISLAMIC BANKING RIBA FREE ? (CASE STUDY : MURABAHA CONTRACT)

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Abstract

Islamic banks is established to provide solutions on the need for transactions and financing facilities to the Moslem who want to avoid riba and gharar. From the previous researches, author obtains facts and conditions : 1) Moslem people think Islamic banks still implement contract and transaction contain riba or they do not comply with Holy Qur'an and Sunnah of Prophet. 2) In executing murabaha contract, Islamic banks under study have not possessed or controled the goods before they sells it to the customer. To find out how and why those facts and conditions happen in Islamic bank, author uses case study as research methodology. After after analyzing the implementation of murabaha contract from previous researches and comparing it to the sharia standards, author found there are gaps between the murabaha contract that has been implemented in several Islamic bank and in sharia standard. In this case, author uses sharia standard issued by Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI). Those gaps are implementation of wakalah contract, possession of goods and implementation of murabaha contract. Islamic bank should improve the process or mechanism of those contract. The conclusion is because lack of understanding about that Islamic banks have to improve the process of Murabaha contract, such as the process of acquisition of goods so the process refers to the Holy Qur'an and the Sunnah of Prophet.

Keywords : Murabaha, Case Study, Islamic Bank

1. INTRODUCTION

The first Indonesia Islamic bank had established since 1992, by moslem businessman and moslem scholar. The objective of setting up the Islamic bank is to fulfill the aspiration of moslem people about a bank which complies with the Holy Qur'an and the Sunnah of Prophet.

After 25 years, the development of Islamic Banks in Indonesia are really

significant. Table 1, Financial Services Authority, Republic of Indonesia data (Financial Services Authority, 2017b) shows several bank's indicators have grown such as Total Asset, Receivables From Non Bank (Murabaha), Third Party Fund for period 2014 – December 2017.

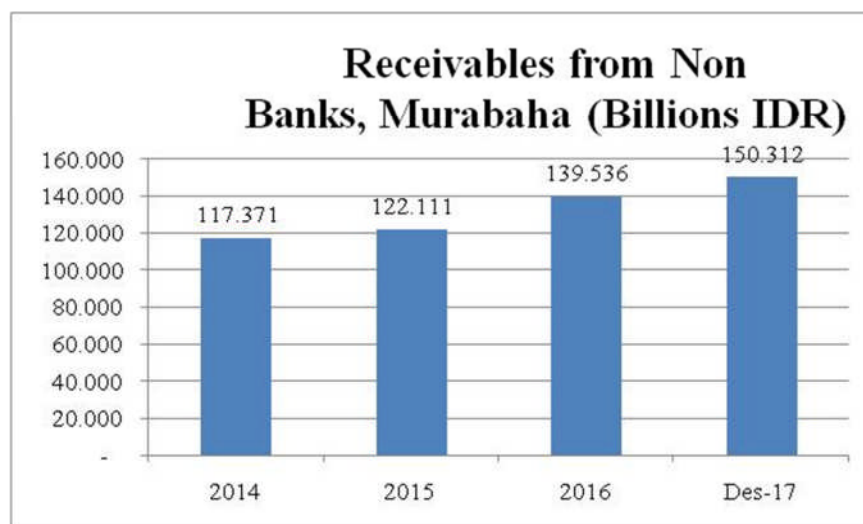
Table 1. The Development of Islamic Bank

Informations	2014	2015	2016	2017
Number of Banks				
- Sharia Commercial Bank	12	12	13	13
- Sharia Business Unit Operations	22	22	21	21
Asset (Billions Rupiah)				
- Sharia Commercial Bank	204,961	213,423	254,184	288,027
- Sharia Business Unit Operations	67,383	82,839	102,320	136,154
Receivables from non Bank, Murabaha (Billions Rupiah)				
- Sharia Commercial Bank	91,867	93,642	113,971	114,494
- Sharia Business Unit Operations	25,504	28,469	29,473	35,818
Third Party Funding (Billions Rupiah)				
- Sharia Commercial Bank	170,723	174,895	206,497	238,225
- Sharia Business Unit Operations	47,136	56,280	72,928	96,495
Financing Deposit Ratio (%)				
- Sharia Commercial Bank	86.66	88.03	85.99	79.65
- Sharia Business Unit Operations	109.02	104.88	96.70	99,39

Source : Financial Services Authority. 2017. *Sharia Banking Statistics, December 2017*

Islamic bankings have played an important role in Indonesia financial industry and contributed to Indonesia's

economics growth. They become an intermediary between funder and business owner.



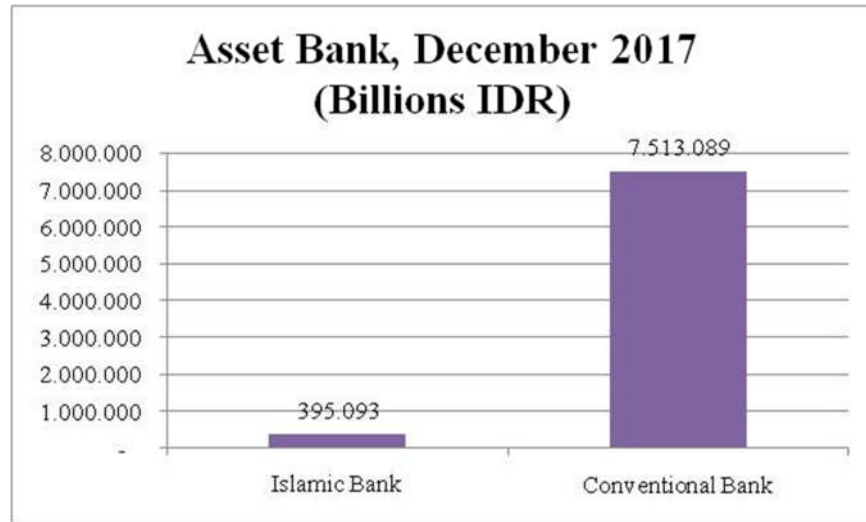
Source : Financial Services Authority. Sharia Banking Statistics, December 2017

Figure 1. Receivables from Non Banks

Figure 1, shows data of Receivables from Non Banks (Murabaha Contract) 2014-2017 period. The position of Receivables from Non Banks in December 2014 is Rp. 117,371 Billions and the position in December 2017

becoming Rp. 150,312 Billions. The indicator grows up every single year. It means that Islamic bankings have disbursed fund to financing not only consumptive but also productive needs,

such as buying house, machine, office or raw material.

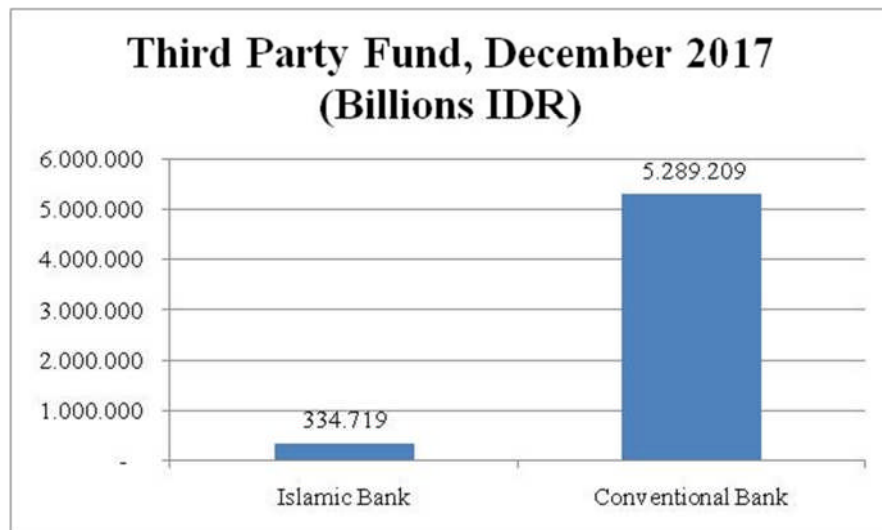


Source : Financial Services Authority. Sharia Banking Statistics, December 2017 Financial Services Authority. Indonesia Banking Statistics, December 2017

Figure 2. Total Asset of Islamic and Conventional Bank

Figure 2, shows the comparison between asset of Islamic banks and conventional banks, in December 2017. Total asset of Islamic banks in December 2017 much lower than total asset of conventional banks. It is only Rp. 395,093 Billions or 5.2 % of

conventional banks's total Asset. It indicates that the capacity of Islamic bank to finance the business activity is much lower than capacity conventional banks, therefore the opportunity of Islamic banks to gain profit become limited.



Source : Financial Services Authority. Sharia Banking Statistics, December 2017 Financial Services Authority. Indonesia Banking Statistics, December 2017

Figure 3. Third Party Fund

Figure 3 shows that Islamic bank's Third Party Fund is much lower than conventional bank's Third Party Fund or

it is only 6.2 %. This indicator represents the capability of Islamic Bank to financing the business activity.

2. LITERATURE REVIEW

According to Financial Services Authority Rule (Financial Services Authority, 2015), Islamic banks could offer products which use murabaha contract to their customers. This contract usually is used for buying goods such as buying car, house, office, raw material, machinery or other things.

2.1. The Result of Survey on Moslem Perception About Islamic Bank in Indonesia.

Previous researchers found :

1. Mardian Sepky (Sepky, 2015) concludes :
The development of Islamic banks should be followed by adherence to Islamic principle. National Sharia Board of the Indonesian Ulama Council (DSN-MUI) and Sharia Supervisory Board DPS are the institution that have responsibility for Islamic bank compliance to the Holy Qur'an and the Sunnah of Prophet. DSN-MUI has published more than 95 fatwa. But DSN-MUI has several constraints such as human limitations in supervising Islamic banks. On the other hand, many moslem people are not ready to implement Islamic principles in their life and do not too concern about the danger of riba. Those conditions impacts on the compliance of Islamic bank toward the Holy Qur'an and the Sunnah of Prophet.
2. Satriya Ismujati Pramanto (Pramanto, 2014) explains :

The perception of Surabaya Timur's people who do not choose Islamic bank as their bank is Islamic bank and conventonal bank implement the same banking practise but they use different terminology. This happens because many moslem people do not have knowledge about Islamic bank, a new thing in Indonesia financial industry and Islamic bank have not disseminated much information about it.

3. Muhammad Hasan Ramadhan (Ramadhan, 2014) explains :
Respondents consider that the Islamic bank is still the same as conventional banks. In terms of practice, the difference between the two banks has not been seen clearly. The system used is still using conventional bank system and the contract or transaction used in Islamic bank is just replacement term.
4. Amir Mu'allim (Mu'allim, 2003) in journal *Al Mawarid* XI Edition 2004 explains :
On contrary, people who already have an account in Islamic Banking tend to close their account, because of bad service or doubt on the implementation of Islamic principle.

2.2. Practise of Murabaha Contract

Several researchers had studied about implementation of Murabaha contract in Islamic bankings. The

reseaches had been done in several city and different Islamic banks.

According to a December 2017 report by Financial Services Authority (Financial Services Authority, 2017b), there are 13 Islamic banks and 21 Sharia Business Unit Operations and previous researchers do the research in several Islamic banks.

1. Pipit Setyaningtyas (Setyaningtyas, 2016) in her study :
“eventhough Bank Syariah Mandiri, Purwokerto branch uses wakalah contract but in the real transaction, customer still does not get the money from bank for buying the goods eventhough bank becomes a principle. Processe that occures, bank transfer the money to customer account and at the same time bank will debet the money and the transfer it to the supplier 's account (the owner of house/car/goods). ”wakalah contract is used to prove that there is a sale and purchase transaction between bank and supplier“
2. Zulia Hanum (Z. Hanum, 2014) explain that in bank's standard operating procedure :
 - a. After the branch manager approves the financing proposal, financing comittee will make a financing memorandum and based on that memorandum, notary will make a deed of debt recognition and binding of warranty goods.
 - b. After all document required are completed, financing administration supervisor will disburse the money.
 - c. Staf at financing administration will maintain the customer account and

transfer/credit the money to customer's account.

3. Muhammad Ali Fauzi *et.al* (Fauzi, Adnan, & Harahap, 2015) in journal Law Doctoral Program, University of Sebelas Maret explains :
According to the Indonesia Law, the implementation of mortgage financing in Bank Syariah Mandiri : bank has made a sale and purchase transaction of house that have owned by customer. This is indicated : customer have signed a notary act of sale and purchase transaction with property developer before signing murabaha contract with bank.
4. Aulia Hanum (A. Hanum, 2015) has conducted a research in Bank Muamalat Indonesia, Bank BRI Syariah, Bank Syariah Mandiri and Bank CIMB Niaga, Malang Branch, explains :
Impementation of murabaha bil wakalah contract in those banks are different from each other. Implementation of murabaha contract in Bank Muamalat Indonesia and Bank BRI Syariah, Malang branch almost comply Islamic principle. Contrary to that, Implementation of murabaha contract in Bank Syariah Mandiri and Bank CIMB Niaga Syariah, still do not comply. Such as Bank Syariah Mandiri does not execute wakalah contract. Even, Bank CIMB Niaga Syariah which has sharia business unit, it really does not do Islamic principle.
5. Achmad Subchan (Subchan, 2015) in his research explains :
In implementing murabaha contract, Bank BCA Syariah uses

wakalah contract but its implementation does not comply with Islamic principle. In this case bank makes a sale and purchase transaction of goods but the goods has not been owned or controled. Bank gives an authority to customer to buy the product which he wants and bank lends some money to the customer.

6. Pedagogita Rakhma (Rakhmah, 2014) she explains :
In BTPN Syariah, murabaha contract is known as murabaha bil wakalah. Bank makes two contracts, prior to making wakalah contract, bank makes murabaha contract with customer. Bank gives an authority to the customer to buy the goods from the seller that he wants, then seller will delivery the goods to customer. It is known by bank and bank will receive an receipt from customer.
7. Pajar Rahmatuloh (Rahmatuloh Pajar, 2015) concludes :
In the implementation, there are three different form of murabaha contract. The most widely implemented form is the signing of wakalah contracts and murabaha contracts done simultaneously.

2.3. Murabaha-Wakalah Transaction and, Qabdh according to Holy Qur'an and Sunnah of Prophet :

There are many discussion about terminology of contract, term & condition and rukun Murabaha and Wakalah contract and Qabdh which is done by moslem scholar, Islamic bankers and the financial authority.

On this section, author will focus the study on murabaha contract principle, Wakalah and Qabdh which is often ignored.

2.4. Promising or Wa'ad between customer and Islamic bank.

Prof DR. Wahbah Az-Zubaili (Wahbah, 2011) explains : In its operation, Islamic bank implement *bay'ul murabahah lil aamir bisysyiraa* :

There are two promises : customer's promise to buy a goods from bank and bank's promise to sell a goods to customer in murabaha contract.

The argument is based on opinion of Imam Syafi'i in his book Al-Umm, as well as Imam Maliki's opinion.

2.5. Selling a good before the seller own the good.

Prof DR. Wahbah Az-Zubaili (Wahbah, 2011) says Imam Hanafi, Imam Maliki, Imam Hanbali, Imam Syafi'i and Imam Ahmad argue that do not sell goods whose ownership status is unclear :

Imam Ahmad narated from Hakim bin Hizam ra, he said, "I said, 'Prophet, I always buy goods, so what is halal and unlawful for me ?'" The Prophet (peace be upon him) answer : "*If you buy goods, do not sell those goods until you get them from the seller*". The Prophet (peace be upon him) have said "*You are not permissible to get profit if you do not have the goods and you should not sell the goods that you do not own or control*"

Sayyid Sabiq (Sayyid, 2009) explains that a seller should not sell the goods which is bought from the supplier until he possesses or controls the goods.

The wisdom of the implementation of this hadith : if a seller sells goods and buyer has not acquired the goods, so the seller still has to be responsible if goods is damaged or lost. And seller should not get profit if he does not want to take business risk.

2.6. Qabd or Taking Possession

A murabaha contract is valid when the goods has been taken possession by the buyer.

In general there are two kinds of possession goods :

1. *Qabd Hukmi* : delivery non physical goods. According to the law, someone has a right to control the goods even it could not be moved physically, such as land, building etc. The possession of those goods is indicated by people could live in the house or the building or plant something on that land.
2. *Qabd Haqiqi* : delivery physical good, someone has a right to control that goods physically. Sayyid Sabiq (Sayyid, 2009) explains : delivery goods could be done by : 1) fulfilling the measure or scales if the amount is known 2) to moving the goods from its origin if the amount could not be measured 3) following the tradition/custom if the goods is not include in category 1 & 2.

2.7. Wakalah contract, Wakil or Customer

The explanations about wakalah contract has been discussed by previous researchers. On this section, author will focus on the implication of wakalah contract : principle (al-muwakkil) and agent (al-wakil).

Prof Dr Wahbah Az-Zubaili (Wahbah, 2011) explains that principle

and agent, each party has obligations and authorities :

Principle (Al-Muwakkil) :

1. Obligation :
 - a. Paying the goods that has been bought.
 - b. Taking risk/loss in case of agent is not misconduct, negligence or breach the contract.

Customer :

2. Obligation :
 - a. Buying the goods at common price and not defective.
 - b. Buying the goods that has been determined by principle if it is not, agent buys the goods for himself.
3. Authority :
 - a. Buying buy the goods in lower prices that has been determined by principle.

2.8. Sharia Standard according to Accounting, Auditing, Organization for Islamic Financial Institution (AAOIFI)

1. Taking Possession (AAOIFI, 2015a) :
 - a. Based on custom or tradition, form of possession could be differed depends on the nature of good and differences among people about a good.
 - b. Actual possession for immovable goods is if the good could be released and enable to be transacted.
 - c. Actual possession for movable good is if the goods has been moved or delivered to buyer's location.
 - d. Actual possession for non physical good or constructive possession is such as possession by the

beneficiary of a bank draft, personal cheque, possession of document like bills of lading, warehouse receipt and a deposit by a person of an amount in a bank account.

2. Wakalah contract according to Sharia Standard (AAOIFI, 2015b)

Rules as principle/bank (Al Muwakkil) and agent/customer (wakil) :

a. Principle :

- 1) Having legal standing to make a contract.
- 2) Having a right to sell or buying an asset.

b. Agent/customer :

- 1) Having legal standing to make a contract.
- 2) Committing to implement what is stated in the contract

Commitment principle (Al Muwakkil) and agent (wakil) :

a. Principle :

- 1) For procurement good/service, principle bears all costs incurred, including transportation expense, warehousing expense, tax and maintenance expense.

b. Agent/customer.

- 1) Customer does not have responsibility to replace the goods if the goods is defective, except the customer is misconduct, negligence or breach the contract.

3. Murabaha Contract according to Sharia Standard (AAOIFI, 2015c)

Procedures prior to Murabaha Contract.

- a. Bank may purchase the good that customers wish as long as it complies with Islamic principle. Bank could buy the good from seller that customer wants, but bank could refuse it if the supplier is not reliable.
- b. The customer wish to buy something does not mean a promise except it is expressed in document including :
 - 1) Customer's desire for bank to buy the good.
 - 2) Bank's promise to buy the good that customer wants.
- c. Offering letter to the bank should be written by supplier, a sales and purchase transaction between bank and supplier is valid when bank agrees with the offering.

The Position of Bank Related to Customer's Application of Murabaha.

- a. If there is a sales purchase transaction between customer and supplier, bank should not do murabaha contract. And bank could ask the customer to cancel the transaction.
- b. Bank has to ensure that the seller of the goods is real supplier not customer or his/her agent.
- c. Bank and customer are not permissible to make agreement that they are agree to make a partnership in a sales purchase transaction and one party promise to buy

- the other share by cash or installment.
- d. Murabaha contract is not valid for :
- 1) The object of transaction are gold, silver or currency.
 - 2) Re-financing.

Promise from the customer

- a. The promise between bank and customer are not binding. The argument : a binding agreement is similar to a sale and purchase transaction for a good but seller has not already owned the good.
- b. In murabaha contract, promise from customer to buy the goods is not an obligation. It just a way for the bank to ensure, customer will buy the goods that bank has been bought.
- c. Since murabaha contract has not been concluded, all clause could be changed such as price, deffered payment etc. as long as both party agree.
- d. In buying goods from the supplier, bank has to ask seller an option for certain period if there is a cancelation of sale and purchase transaction.

Collateral :

- a. If customer ask a certain supplier, bank could ask customer a collateral. Collateral is used as a substitute for losses if the supplier does not complete his contract. It is include : incorrect spesification, everything

that causes loss (time, resource, property etc.)

- b. During storage or delivery, if the good is damage, bank has to be responsible to replace it with a new one.
- c. For customer's promising, bank could ask *hamish jiddiyah* هاشم الجديدة or *security deposit*, to the customer. The deposit is used to compansate if customer breach the promise.

3. RESEARCH METHOD

3.1. Research Approach

Case study is one of the research methodology that has been known and it can be group as a qualitative research (Yin, 2012). This methodology has been using in researching psychology, business, economic, politic area and used to explore about a complex phenomena on an event such as management process or organization (Yin, 2014).

3.2. Research Object

This paper is based on author observation to the development of Islamic bank in Indonesia in last 5 years and author's experience as banker for 16.5 years. The object of research is the implementation of murabaha contract in Islamic bank especially for consumptive financing.

3.3. Data Source

To complete the information and data for the purpose of this study, author collects the result of researches conducted within the last 10 years, namely:

1. Research on people perception about Islamic bank in Indonesia.

2. Research on implementation of murabaha contract in Islamic bank.

Research conducted by researchers both at the level of Bachelor and Graduate, either thesis or journal.

Another data are secondary data published by government institutions such as the Financial Services Authority and Central Bureau of Statistics. As data comparison, author uses Sharia Standard issued by the competent institution *Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI)*.

3.4. Data Collection Technique

To collect data, author uses :

3.4.1. Document Analysis

Analyze relevant documents in the form of contracts and the results of previous researches on implementation of Murabaha contracts in several syariah banks.

3.4.2. Observation

The author's experience as practitioners in Islamic banks and author's interaction with Islamic banking to date, became a way to collect data and information about the implementation of Murabaha contract.

The analytical technique used is to compare between the result of previous researches and the author's experience about implementation murabaha contract in Islamic banking with Sharia Standards issued by AAOIFI which

refers to Holy Qur'an and Sunnah of Prophet.

4. RESULT AND DISCUSSION

Before discussing, "Why" and "How" so that the implementation of murabaha contract still contains riba and gharar, we have to see the condition of moslem people and Islamic banking in Indonesia today.

Figures 2 and 3 shows the comparison asset - third party funds of Islamic banks with asset - third party funds of conventional banks. According to those data, asset - third party funds of Islamic banks is very small. This happens since the first Islamic bank established in 1992. If we looks the number of moslem in Indonesia which is more than 200 million people (Central Bureau of Statistics, 2011), it indicates that moslem people still have not used Islamic banks as their bank for financial transactions and funding sources.

On the other hand, according to data in Figure 1, the product with murabaha contract increases in volume over the years. It indicates that there are moslem people uses Islamic bank to get financing for buying house, car, office, machinery etc. They depend on the existence of Islamic bank and choose Islamic banks as an alternative beside conventional banks.

Table 2. Gaps between Impelementation and Sharia Standard

No	Problem	Implementation	Sharia Standard
1.	Wakalah Contract	<ol style="list-style-type: none"> a. Implemented but customer has bought the goods before he signs wakalah contract. Customer has paid down payment or booking fee to supplier. b. Customer signs wakalah contract simultaneously with process of application. 	Wakalah is signed before Murabaha contract is concluded and Bank as principle is responsible for things done by customer.

		c. The responsibility of bank and customer are unclear.	
2.	Possession	a. Customer buys goods which is not possessed or controled by bank. b. There is no handover goods between the supplier and the bank.	The handover of the goods to the customer is implemented after the bank possess/controls the goods.
3.	Murabaha contract	The signing of murabaha contract is done without considering the process of handover of goods between the supplier and the bank	For buying goods , customer make a promise with the bank. And bank could ask customer giving a collateral as compensation if customer breach his promise.

5. CONCLUSION

The conclusion of this research are :

- 5.1. There are many important things, according to sharia standards, that have not been done in the implementation of the wakalah contract, taking possession and murabah contract, it can be seen in table 2.
- 5.2. By ignoring sharia standard, public perception about Islamic bank still contains riba and gharar becomes true.
- 5.3. Causes of the occurrence of this condition:
 - 5.3.1. Moslem people and practisioner are less aware of muamala sharia so they can not distinguish between right and wrong contract such as wakalah contract, murabaha contract etc.
 - 5.3.2. The supervisory agency has not performed its function optimally so that the improvement process in Islamic bank has not run properly.
- 5.4. Moslem people and practitioners of Islamic banking have to improve their understanding about muamalah sharia concept so that Islamic banks can operate in accordance with Holy Qur'an and Sunnah of Prophet. Thus, moslem people can play an active role in

development of Indonesia economic.

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