

IMPLEMENTATION OF QARDH ON ISLAMIC BANKING INDONESIA BASED ON ISLAMIC ECONOMICS THEORY

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Abstract

This study aimed to analyze about Qardh implementation on Islamic Banking Indonesia based on Islamic Economics Theory. The method of this research is qualitative and the paradigm used interpretative. Data collection are in-depth interviews, observation, and documentation, while the analysis taken is Interpretative Phenomenological Analysis (IPA) and Syar'i Analysis.

Interpretative Phenomenological Analysis (IPA) results show that according to the experience of Muqridh implementations object of Qardh on Islamic Banking Indonesia include Salary Down Payment, Hajj Bailout Fund, Gold Rahn, and Hawalah, while the results based on Syar'i Analysis concluded that most of Qardh objects are not in accordance with Islaimc Economic Theory,

The proposed ideas is for developing Qardh object, that refers to a social object that has a high Maslahah value for Muslim society in Indonesia, with contract which does not violate Shar'i, such as replace Salary Down Payment into Murabaha financing, Hajj Bailout Funds become Hajj Savings, Gold Rahn becomes Rahn Tasjily, and Hawalah bil Mudaraba / Hawalah bil Musharaka become Syirkah Amlak and Musharaka Mutanaqishah.

Key Words: Islamic Economic Theory, Interpretative Phenomenological Analysis, Muqridh

INTRODUCTION

Islamic banking has a very important position in maintaining the development stability of real sector. This sector is closely associated with lower and middle class society economic activity. Therefore, in accordance with its position, Islamic Banking give Islamic finance products, which classified into five categories based on their intended use, they are: (a) financing with *Buyu'* principle (*Murabahah, Salam, and Istishna'*); (b) the principle of lease financing (*Ijarah*); (c) financing with the principle of *Syirkah* (*Musharakah, Mudarabah, Muzara'ah, and Musaqah*); (d) fee-based service (*Wakalah, Kafalah, Hawalah, Rahn*); and (e) social

product (*Qardh* and *Qardh al-Hasan*) (Adnan and Furywardhana, 2006:156).

Qardh and *Qardh al-Hasan* is one feature that distinguishing between Islamic Banks and conventional banks, that it has a social mission, in addition to its commercial missions. This social mission is expected to improve the image of Islamic banks and community loyalty toward Islamic Banks (Antonio, 2001:188). According to Karim (2007:68), *Qardh* is an agreement to lend money, while *Qardh al-Hasan* in essence is charity, because the contract does not require repayment. But in several countries like Malaysia and countries in the Middle East does not distinguish between *Qardh* and *Qardh al-Hasan*.

Furthermore the name of *Qardhul Hasan* is also the only Islamic Banking product which names is directly taken from the Qur'an, among other (Surah al-Baqarah, 2:245; al-Hadid, 57:11 and 18; and al-Muzzammil, 73:20). In Indonesia, *Qardh* is an Islamic Banking product, based on MUI (Majelis Ulama Indonesia-Indonesian Ulama Council) fatwa No.19/DSN-MUI/IV/2001, which funds is derived from capital and profits excluded from Islamic Financial Institutions (IFI), as well as other institutions or individuals who entrust the distribution of their infaq through IFI. In 2011, MUI reissued a fatwa about *Qardh* with No.79/DSN-MUI/III/2011 which its fund is originally from the customers.

According to data compiled successfully, for this contract *Qardh* is always rolled by sharia banks (BUS) in Indonesia (see Annual Report from Sharia Banking in Indonesia). Instead, in some Muslim countries such as Iran, Sudan, Egypt, Kuwait, Pakistan and Indonesia, *Qardh* contract is a contract that is not popular even give a very small return for the banks, and a negative net present value on investments of Islamic banks (Zaher and Hassan, 2001). Therefore, the problem in this research is, how is *Muqridh* understand and make experience in the *Qardh* implementation in Indonesian Islamic Banking? and how the *Qardh* implementation in Islamic Bank with perspective Islamic Economics Theory?

LITERATURE REVIEW

A. Definition and Dalil of *Qardh*

Literally, *Qardh* derived from *al-Qath'u* which means cutting. Mentioned in the dictionary of *al-Mishbah*, "*Qaradhtu al-syai'a Qardhan*" which means I cut it (al-Bugha, 2010:51). Ismail (2010:72) stated that *Qardh al-hasana* is beautiful loan, which is primarily a business transaction that establishes a relationship of lender and borrower. Meanwhile Abdul Rahman (2006) define *Qardh* as the transfer of ownership of an asset or money from the original owner to others on condition that the asset or money will be returned to the owner in the same condition / form / value as when it first received by the other party from the owner.

Furthermore, in terms, according Hanafiyah, *Qardh* is an assets that has an equivalence, which creditor lend to others in order to get creditors assets back or billed the debtor or in other words, a transaction that is intended to provide an assets that has an equivalence to others (in this case debtor) to get a return that is equal with the initial asset. The other *madzhab*s defines *Qardh* as a form of giving an assets from someone (the lender) to another person (the debtor) with collateral assets that has equal value with the debtor

borrowings responsibility, which is equal to the assets taken, intended as an aid to others given. The assets include *mitsliyat* assets, animals, and merchandise (az-Zuhaili, 2011:374).

Qardh is permissible and justified in sharia. There is no difference of opinion among Ulama in this regard. People who are in need of money can state their desire to borrow. *Dalil* of the *Qardh* contained in the Qur'an, among others, surah al-Baqarah (Surah 2:245), al-Maidah (Surah 5:2), al-Hadid (Surah 57:11 and 18), at-Taghaabun (Surah 64:17), and al-Muzzammil (Surah 73:20). As for the *dalil* of the Sunnah, among others, HR. No. Ibn Majah. 2426, HR. No. Ibn Majah. 2431, HR. No. Muslims. And HR 2699. No. Tarmidzi. 4015.

Furthermore, for the *dalil* of Ijma' stated that *Qardh* allowed and is *mandub* (recommended) for *Muqridh* (people who give debt; creditors) and *mubah* (permissible) for *Muqtaridh* (people who owe; debtors). *Madzhab* Hanafi argued, *Qardh* is justified to an assets which has equivalence, in example the value of an assets do not have striking differences, such as dosed items, weighed items, grains that have a similar size such as coconut, and egg. It is forbidden to do *Qardh* of assets that has no equivalence, either valuable as an animal, wood and agrarian, and treasure grains that have striking differences, because it is impossible to return it with the same kind, based on the argument of this group, lending and borrowing goods which cannot repalced by the same goods is not allowed.

B. Basic Islamic Economic Theory

1. Amanah Principle

Amanah is something that is left to others to be maintained and returned when the time comes or when requested by the owner, Shihab (2002:457). Some of the verses relating to *Amanah*, among others are, in an-Nisaa' (QS-Qur'an Surah. 4:58), al-Anfal (QS. 8:27), al-Mu'minin (QS.23: 8), and al-Ma' arij (QS. 70:32). In relation to Islamic Banking, the *Amanah* Principle can be manifested in the form of not accepting gifts or commissions in the business lobby, not take *riba*, does not accept a bribe, do not cheat, do not *dhalim* from the start of input, process, and output must be free from *haraam* transactions and services.

2. Maslahah Theory

Maslahah are all forms of condition, both material and non-material, which can improve the human position as the most noble creature (P3EI (Pusat Pengkajian dan Pengembangan Ekonomi Islam-Assessment and Development Centre of Islamic Economics), 2008:5). In the Qur'an, *Maslahah* referred as a benefit or *manafi'* which means a goodness associated with the material, physical, and psychological as well as other sensory matters.

The essence of the theory of *Maslahah* in economic activity is the achievement of human welfare, which lies in the protection of five things, namely religion (*ad-dien*), soul / life (*an-nafs*), intellectual (*al-'aql*), family and descendants (*an-nasl*), and property (*an-Naml*) (as-Syatibi, in P3EI, 2008:54). *Maslahah* in the implementation can be divided into three levels, namely: The first level, *Maslahah Dharuriyah*, is all aspects that are essential for human life, and therefore must exist as an essential condition of life manifestation and human benefits, both worldly and hereafter. The second level, *Maslahah Hajiyyah*, is everything which become basic necessity (principal) of human in their life, so that they have happy and prosperous life and afterlife, and to avoid poverty. If this necessity is not obtained, it will threaten their survival indirectly, but their life becomes less powerful. The third level, *Maslahah Tahsiniyah*, which is a necessity of life that is complementary in nature (as a supplement) and further refines the welfare of human life. If this benefit is not met, then the human life is less beautiful and less enjoyable, although it will not caused a *mudharat* and destruction of life.

In relation to the *Qardh* scheme, the alignments of Islamic banking to the public interest will be very important. In accordance with the Syatibi's Theory, the principle of benefit (*Maslahah*) on every aspect of financing is reflected in the absorption of the financing, for example the number of workers absorbed in *tijarah* activity.

RESEARCH DESIGN

This research is a qualitative study using natural background which aims to interpret phenomena, and carried out with the involvement of various methods that exist. The paradigm used in this study is the interpretive paradigm. Interpretive paradigm is based on the belief that individual (human) is a creatures that socially and symbolically establish and maintain their own reality (Berger and Luckmann, 1967; Morgan and Smircich, 1980 in Mulyana 2011:8). The research approach used is phenomenology. This approach was pioneered by Edmund Husserl (1859-1938) (Moran, 2000:1). Phenomenological approach is trying to express the meaning of one's experience. The meaning of something that is experienced by a person is depends on how people relate to something (Edgar and Sedgwick, 1999:273).

This study was conducted on several Islamic Banks in Indonesia, such as PT BMI, PT BSM, PT Bank Negara Indonesia Syariah, and Islamic Business Unit of PT Bank Tabungan Negara. Data collections methods used in this

study are in-depth interviews, observation, and documentation.

The analysis used includes IPA (Interpretative Phenomenological Analysis). IPA aims to explore in detail how one understands them self and their surroundings, about the meaning of their experience of something. The main target is the meaning of the experiences, events, and status held by participant. The Syar'i Analysis is an analysis which is not based on reasoning, experience, or sensory observation, but based on researchers belief of conscience, namely al-Qur'an, as-Sunna, and al-Ijtihad. Interpretative Phenomenological Analysis refers to Smith (2009:79-107). with modification steps.

RESULT AND DISCUSSIONS

Data collaboration using IPA, on understanding and experience of *Muqridh* in *Qardh* implementation on Islamic banking raises several themes from each *Muqridh*, as shown in the following table:

Table 1. Themes of *Muqridh*

No	Muqridh 1	Muqridh 2	Muqridh 3	Muqridh 4
1	Definition of <i>Qardh</i>	Definition of <i>Qardh</i>	Definition of <i>Qardh</i>	Definition of <i>Qardh</i>
2	<i>Qardh</i> Object: Salary Down Payment, Hajj Bailout Fund, Gold Rahn	<i>Qardh</i> Object: Hajj Bailout Fund, Gold Rahn, Hawalah	<i>Qardh</i> Object Hajj Bailout Fund, Gold Rahn, Hawalah	<i>Qardh</i> Object Hajj Bailout Fund, Hawalah

Source: Result of IPA Analysis, 2014

According to *Muqridh* understanding, *Qardh* is loans given to customers who have certain criteria and in its implementation is based on the regulation of Bank Indonesia, the DSN (Dewan Syariah Nasional-National Sharia Board), the MUI (Majelis Ulama Indonesia-Indonesian Ulama Council), and decision taken by the special committee of Islamic banks named ALCO (Assets and Liabilities Committee). The analysis results using IPA concluded that according to the experience of *Muqridh*, *Qardh* implementation in Islamic banking can be identified *Qardh* object include Wages Down Payment (WDP), Hajj Bailout Fund (HBF), *Rahn*, and *Hawalah*.

WDP an unsecured loan, is specifically given to Islamic Banks employees to improve the welfare of employees. In its implementation in Islamic banking, the majority of its funds originate from Third Party Funds, especially *Wadiah yad-dhamanah* current account. Whereas, the money deposited by the customer should used for *tijarah* activities which

generate profits, so the customers, as the owner of the funds, get a benefit in the form of bonuses and profit sharing from their funds which deposited and invested to Islamic banks. But with *Qardh*, which only intended for the welfare of employees, it means that opportunity to increase the amount of revenue from *tijarah* activities is getting smaller, due to funds allocation which is used for WDP. As a result, the amount of revenue that should be enjoyed by customers, instead, is enjoyed by employees of Islamic banking. Obviously there is a possibility of injustice which is conducted by the Islamic banking to its customers.

This practice is certainly not in accordance with the principle of *Amanah* (Qur'an Surah al-Anfal, 8:27) which states that the mandate of humans to the other humans covers many things, not just the property deposited, or bond agreement agreed, but also a secret which is whispered. *Amanah* also indicate the existence of individual awareness about their role as the representative of Allah SWT and play a role in accordance with the rules and norms of the Lord (Triyuwono, 2006:183). When customers' deposit money, which is an *Amanah*, not used for their intended purpose, this means that Islamic banking has betray their customers. Furthermore, if it is linked with the theory of *Maslahah*, WDP has no association with optimizing the benefits of financing carried out by the Islamic banking (because it is only enjoyed by a particular group / bank employees), so there is no additional impact on the number of people who are getting free from difficulties to get a chance, as well as to work and trying a business.

HBF is a credit facility provided by Islamic banks to its customers with an aims to cover the shortfall of BPIH, in order to get the hajj portion, which is implemented through SISKOHAT of the Ministry of Religious Affairs of the Republic of Indonesia. HBF is one of the debt facilities provided by the Islamic banking to customers who actually have not been able to go for Hajj economically, so it is feared that it will burden their living during debt period. Viewed from general conditions, people who get HBF facility is not really obliged to do Hajj (according to *madhhabs* Maliki), because they do not have sufficient financial capacity. Especially if later, somebody who actually is not obliged to do Hajj according to sharia, with the lure of HBF, then they force to register themselves to do Hajj, this is certainly not in accordance with Islamic sharia. Furthermore, the HBF facility causing the Hajj queue becomes very long, with an average of nearly 10-15 years for the entire territory of Indonesia.

In the gold-backed *Qardh* implementation in Islamic banking, an object that can be used as collateral for gold-backed *Qardh* is a precious metal (jewelery) and gold certified by PT. Antam (Persero) Tbk. Whereas, in the BI

Circular Letter No. 14/7/DPbS dated February 29, 2012, which can be used as collateral in gold-backed *Qardh*, is only certified Gold which is issued by PT. Antam (Persero) Tbk. Then, the amount of funding compared to the value of the collateral or FTV (Financing to Value) is 85% of the assessed value for the precious metal, whereas for certified Gold is at 90% of the average selling price of 100 grams of gold, and the buyback price of gold from PT. Antam (Persero) Tbk., whereas in the Circular Letter above, the maximum FTV is 80% from the average selling price of 100 grams gold and buyback price of gold from PT. Antam (Persero) Tbk.

When referred to the circular letter of Bank Indonesia above, then there are two offenses that occur in the implementation of the gold-backed *Qardh* in Islamic banking in Surakarta, namely: (1) the collateral for gold-backed *Qardh* should only certified 24-carat gold from PT. Antam (Persero) Tbk., but the fact is gold jewelry also allowed to be used *Rahn*, and (2) the FTV should only 80% of the average value of 100 gram gold price and the buyback price of gold, but in fact it is 85% of assessed value of precious metals, and for certified gold is 90% from an average of 100 grams of gold selling price and the buyback price of gold from PT. Antam (Persero) Tbk. Thus, according to the characteristics of the gold-backed *Qardh*, especially the characteristics number 5, then the BUS which offers gold-backed *Qardh* products in Surakarta is not in accordance with the provisions stipulated in the Circular Letter of Bank Indonesia No. 14/7/DPbS dated February 29, 2012 concerning gold-backed *Qardh* products and may be liable to termination of such products.

Furthermore, in fact, the perpetrator of *Rahn*, who then borrow the money, is not poor people (in desperate need of money), because they has a lot of assets that can be pledged in the form of gold or in the form of jewelry. That is, original *Qardh* contract, which is a *tabarru'* contract, in the reality become *tijari* contract which has a commercial purpose. This can be seen with the investment phenomenon which known as "gold gardening investment" (Siregar, 2011:487), so of course this violates theory of *Maslahah*.

The existing *Hawalah* practices in Islamic Banking is using *hawalah muthlaqah* type, means *hawalah* which happens when *muhil*, people who owe, but do not have receivables to *Muhal 'alaih*. Furthermore, there are two kinds of *hawalah* which is implemented in Islamic Banking, they are *hawalah bil Ujrah* and *hawalah* with *tijari* contract, for example *hawalah bil murabahah*, *hawalah bil mudaraba*, and *hawalah bil Musharaka*. If judging from the DSN-MUI Fatwa No. 58/DSN-MUI/V/2007 about *Hawalah bil Ujrah*, then the implementation of the *hawalah* contract that is in accordance with the fatwa is *hawalah bil Ujrah*, while

hawalah implementations that use other contract such as *hawalah bil murabahah*, *hawalah bil mudaraba*, or *hawalah bil musharaka* is not in accordance with Islamic sharia. However, this *Hawalah* also provide opportunities to entrepreneurs who face capital difficulty, so that when linked with theory of *Maslahah*, the existence of *hawalah* is in accordance with *Maslahah dharuriyah*, which is all aspects that are essential to human life, both the *ukhrawi* and in the world.

CONCLUSIONS AND SUGGESTIONS

The results of the data analysis performed concludes several things: (1) According to *Muqridh* understanding, *Qardh* is loans given to customers who have certain criteria and its implementation based on the regulation of Bank Indonesia, DSN, MUI, and decisions set by ALCO, (2) According to the experience of *Muqridh*, *Qardh* in Islamic banking in Indonesia is implemented in the form of WDP, HBF, *Rahn Gold*, and *Hawalah*, (3) In the perspective of Islamic Theory, the *Qardh* object in Indonesian Islamic Banking partially violated *Amanah* principles and *Maslahah* Theory

Suggestion of this research is primarily proposed for: (1) Ministry of Religious Affairs of the Republic of Indonesia, is expected to issue a regulations, soon, relating to the use of the HBF mechanism, by forming a special agency that responsible for managing the use of HBF, (2) DSN and MUI is expected to issue a bulletin relating to the operationalization of the fatwa that has been issued, particularly *Qardh* to facilitate Islamic banking managers in implementing these fatwas, and (3) Next researcher can develop institutional research related to Islamic Banking, Islamic banking products, supervision of Islamic banking, and Accounting for Islamic Banking.

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