

REVIEWING THE FATWAS RELATED TO FINTECH APPLICATIONS IN ISLAMIC FINANCIAL INSTITUTIONS IN INDONESIA

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ABSTRACT – The tendency of the community towards halal products is currently increasing, not only related to objects/goods but also related to muamalah/interactions. The development of the latest fintech applications needs to be examined and detailed again, to be linked with related sharia law. In addition to examining legal status, an interesting thing to develop is how to formulate a fintech application that is following the Islamic economic perspective. Therefore, it is crucial to always review the National Sharia Board – Indonesian Council of Ulama (Dewan Syariah Nasional – Majelis Ulama Indonesia – DSN-MUI)'s fatwa related to fintech applications in Islamic financial institutions (LKS). The results of this study will be used as input for DSN-MUI to formulate policies and fatwas that is issued. This research is a qualitative type. The research subjects are; (1) Sharia Cards, (2) Sharia Charge Cards, (3) Transfers and Collections, (4) Payment Services, and (5) Sharia Electronic Money. There are differences in the bases for determining the contract of each of these products between Islamic countries. The results of this study indicate that: (1) the sharia card product is more appropriate to use the hawalah contract than the kafalah contract, and it is necessary to fix fines due to maturity, monthly fees that are not related to the amount of debt, and to write off merchant fees; (2) Sharia Charge Card products should use a hawalah contract rather than a kafalah contract and need to eliminate fines due to late payment; (3) the use of the wakalah contract on transfer and collection products is correct; (4) payment service products that use a wakalah and ijarah contract should be sufficient to use one of the two; and (5) electronic money can function as money, with transactions using the hawalah principle, as well as debit cards (wadi'ah principles). So, four improvements are proposed to the DSN-MUI fatwas related to the fintech application.

Keywords: DSN-MUI, Fintech, Muamalah, Fatwa, Islamic Financial Institutions

ABSTRAK – Tinjauan Terhadap Fatwa Terkait Penerapan Fintech pada Lembaga Keuangan Syariah di Indonesia. Kecenderungan masyarakat terhadap produk-produk halal saat ini semakin meningkat, tidak hanya terkait dengan benda/barang namun juga terkait muamalah/interaksi. Perkembangan aplikasi fintech terbaru perlu dicermati dan didetailkan lagi, untuk dikaitkan dengan hukum syariat terkait. Selain pencermatan status hukum, hal yang menarik untuk dikembangkan adalah bagaimana merumuskan aplikasi fintech yang sesuai dengan pandangan ekonomi Islam. Oleh karena itu sangat perlu untuk selalu meninjau fatwa DSN-MUI terkait aplikasi fintech pada lembaga keuangan syariah (LKS). Hasil kajian ini akan menjadi masukan bagi DSN-MUI untuk merumuskan kebijakan-kebijakan dan fatwa-fatwa yang dikeluarkannya. Penelitian ini berjenis kualitatif. Subjek penelitiannya adalah: (1) Syariah Card, (2) Syariah Charge Card, (3) Transfer dan Inkaso, (4) Jasa Pembayaran, dan (5) Uang Elektronik Syariah. Terdapat perbedaan dasar-dasar penentuan akad dari setiap produk tersebut di antara negeri-negeri Islam. Hasil penelitian ini menunjukkan bahwa: (1) produk syariah card lebih tepat menggunakan akad hawalah dibandingkan dengan akad kafalah, serta perlu membenahi denda akibat jatuh tempo, monthly fee yang tidak dikaitkan dengan jumlah utang, dan menghapus merchant fee; (2) produk Syariah Charge Card sebaiknya menggunakan akad hawalah dibandingkan dengan akad kafalah serta perlu menghilangkan denda akibat keterlambatan pelunasan; (3) penggunaan akad wakalah pada produk transfer dan inkaso sudah tepat; (4) produk jasa pembayaran yang menggunakan akad wakalah dan ijarah seharusnya cukup menggunakan salah satu dari keduanya; dan (5) uang elektronik dapat berfungsi sebagaimana uang, dengan transaksi menggunakan prinsip hawalah, sebagaimana kartu debit (prinsip wadi'ah). Jadi, diusulkan empat perbaikan atas fatwa-fatwa DSN-MUI terkait aplikasi fintech.

Kata Kunci: DSN-MUI, Fintech, Muamalah, Fatwa, Lembaga Keuangan Syariah

INTRODUCTION

Financial technology (Fintech) is a computer program and other technology used to support or enable banking and financial services. Various financial transactions that have emerged include transactions with machines via ATM/debit cards, credit cards, e-money, fund transfers, and various payment gateway/payment processor services. The reason for launching sharia-based fintech services is to accommodate service users who want sharia-based loan transactions. Sharia-based fintech services in addition to providing offers and schemes that are different from existing (conventional) services, also provide certain restrictions on the use of funds provided by investors or lenders (Alwi, 2018).

In Indonesia, the agency authorized to oversee fintech activities is the Financial Services Authority (Otoritas Jasa Keuangan - OJK). Concerning fintech applications, Bank Indonesia has issued a Consumer Protection Education Program related to the Fintech section. This is to achieve the principles of (1) fairness and reliability, (2) transparency, (3) protection of consumer data and information, also (4) effective handling and resolution of complaints (OJK, 2016).

The development of the latest fintech applications needs to be scrutinized and detailed again, to be linked with related sharia law. In addition to examining this legal status, an interesting thing to develop is how to formulate a fintech application that is in accordance with the Islamic economic perspective, because the application of fintech cannot be avoided nowadays. The development of this application is in line with the increasing awareness of the public in doing halal transaction according to sharia.

Fatwas are not the same as positive law which has binding power for all citizens, but fatwas can only have binding power after being transformed into statutory regulations. In Indonesia, all fatwas regarding the sharia economic and finance are issued by the National Sharia Board-Indonesian Council of Ulama (Dewan Syariah Nasional-Majelis Ulama Indonesia – DSN-MUI). Up to the date when this study was conducted, there were approximately 107 fatwas have been issued and they have contributed positively to the regulation of the sharia economic legal system in Indonesia (Fariana, 2017). The development of information technology (IT) that cannot be dammed should not be feared or avoided but instead used as an opportunity to provide various



conveniences for humans, including in the financial industry (Fariana & Safii, 2018).

The cases and phenomena of conventional fintech that occur in society make the community assume that there is no difference between Sharia Fintech and Conventional Fintech (Hiyanti, Nugroho, Sukmadilaga, & Fitrijanti, 2019). Thus, support from the people is really in need and this is considered as one of the ways to gain Allah's blessing. Islamic banks need times to fully adhere with Islamic principles, hence continuous support especially from Muslims is crucial for survival (Yunus, Kamaruddin, & Embong, 2017). On the other hand, there are variations related to the contracts used in Islamic countries, such as Malaysia, Sudan, and Pakistan (Darsono, Sakti, Astiyah, Darwis, & Suryanti, 2017).

The results of this study will be an input for the DSN-MUI to formulate policies and fatwas that it issues about (1) Fatwa No. 54/DSN-MUI/ X/2006, (2) Fatwa No. 42/DSN-MUI/V/2004, (3) Fatwa No. 10/DSN-MUI/IV/2000), (4) Fatwa No. 9/DSN-MUI/IV/2000, and (5) Fatwa No. 116/DSN-MUI/IX/ 2017. On the other hand, the public's demands for standardization of halal products will increase in the future, therefore it needs to be anticipated.

LITERATURE REVIEW

Previous Research

Ansori (2016) researched the digitalization of the Islamic economy and explained that the digitalization of the sharia economy has occurred, where almost all economic activities use information and communication technology or digitalization, either in packaging products or in marketing products. Suwarsi (2017) observed that efforts are needed to encourage an increase in market share which was still relatively small in number, such as synergies with other Islamic financial industries and the Capital Market, as well as with Fintech companies. Fintech promises to reach a wider range of customers. This condition is a potential increase in the number of new customers of Islamic banks so that the market share value will also increase. all trades labeled as sharia must apply the principles of Islamic law. DSN-MUI needs to do an in-depth study because there will always be developments in financial transactions (Karim Consulting Indonesia, 2017).



Study and Theory Framework

The majority of scholars allow hybrid contracts in Islamic banking. But some scholars underline the hybrid contract aims to legalize usury, it is strictly forbidden. To issue a fatwa, there needs to be a moderate *manhaj* in using sharia texts and *maqashid* sharia (Atmaja, 2018).

All sharia activities must apply the principles of Islamic law in their business (Kurniawan, 2017). The *Ijtihad* process is a process of extracting sharia law. The first concern is why sharia law needs to be explored. Based on the al-Qur'an (21: 107), it can be understood that the sharia law must contain benefits for all humans (ar-Rifa'i, 1999). Islam, as a universal value order should be accepted by all human beings. The function of reason is to understand facts as they are, then reason is used to understand *syara'* texts related to these facts (Ismail, 2014).

The concept of Islamic life requires that every mukalaf (those who are burdened with the law), must know the legal status related to actions and objects, before committing deeds and using objects. It is Allah SWT who determines the legal status of these deeds and objects; some are clear but some need *ijtihad* first to understand them. The legal status of these various actions and objects is simplified by compiling the rules of *fiqh*. Hasbi Hasan stated that Islamic law originated from two main sources, namely revelation and reason. Hasbi Hasan based his opinion on two terms that are very popular among scholars, namely sharia and *fiqh*. Sharia produces a solid union with revelation, while *fiqh* is a product of the human mind (Hasan, 2011).

Abdurrahman (1976) stated that the Syafi'iyah school of thought mentioned that "the basic law (original law) of everything is permissible, until there are arguments that show its prohibition". This opinion was strongly opposed by the Hanafiyah school of thought, which put forward the rule, that "the basic law (original law) of everything is haram, until there is an argument to order." These propositions are often used as a foundation for building the concept of *muamalah*.

'Atha bin Khalil (2003) detailed this general rule, because there is potential for legal confusion when dealing with contemporary *muamalah* transactions. The resulting rule is "the law of origin of human action is bound by *syara* law" while related to objects "the law of origin regarding objects is permissible, as long as there is no argument which prohibits it". The difference in rules is what makes



the difference of opinion possible. This is a clear opinion regarding the rules of fiqh regarding the law of origin of actions and objects (Khalil, 2003).

The standard method in Islam for exploring the solution to each problem is as follows: (1) *fahm al-waqi'* (understanding the facts to be punished), (2) *fahm an-nushus* (understanding texts which are the legal basis for the facts to be punished), and (3) *inthibatqan-nash 'ala al-waqi'* (applying texts to facts appropriately). The result is that the Islamic solution does not change because the texts that are referred to do not change. If there is a difference of opinion, for example, *qaul qadim* Imam Syafi'iy which is different from his *qauljadid*, it does not mean that there has been a change in law, because both are still the law of sharia (Abdurrahman, 2016).

Buying and selling law

Buying and selling is the exchange of property with other assets, both to be owned and controlled (an-Nabhani, 2002). The law of buying and selling is permissible according to the al-Qur'an (2: 275 and 4: 29), whether it requires bargaining or without bargaining because it is clear (*bay 'al-mu'athah*) (al-Banjari, 2016). This buying and selling have several variants that are allowed but some are prohibited. Trading that is allowed is the sale and purchase of credit and *salaf/salam*, while what is not allowed is the existence of two contracts in one purchase/sale, fraudulent buying and selling, and usury.

Buying and selling on credit is allowed in Islam, which is a form of sale and purchase in which goods are handed over at the time of the contract, while the price is paid after a certain time, either all at once or in installments (al-Banjari, 2016). The price in buying and selling of this type, whether paid in lump or installments, is a trade debt (*dayn*). *Salam/salaf* is the handover of existing assets to obtain other assets (goods) that have clear specifications in certain "debts" for some time (an-Nabhani, 2002).

Islam has prohibited certain conditions in a sale and purchase transaction so that there are two transaction contracts in one contract. The prohibition related to *muamalah* is very strict. Buying and selling in which there are *aregharar* and buying and selling using the *al-'inah* system (al-Banjari, 2016). The existence of fines in credit transactions in the event of late payment is prohibited in Islam and is categorized as usury.



Lending and borrowing laws

Providing loans to people in need is sunnah. Seeking a legal loan is also sunnah, not makruh. On the other hand, sharia has prohibited usury, regardless of the amount, whether a little or a lot. The characteristic that appears in usury is that there is a profit taken by usury eaters, which is the result of the exploitation of other people's labor because it is guaranteed to bring profit, it is impossible to lose (an-Nabhani, 2002). Related to this lending and borrowing, four things are related, namely qardh, wakalah, wadi'ah, and hawalah.

Qardh is a form of salaf, which is to give property to others to then ask for it to be returned. This Qardh is permissible (Triono, 2017). One of the provisions in this qardh is that the ownership of assets transferred, from creditor to debtor, must be owned by the creditor or has been permitted by the owner of the property. Qardh becomes usury when there is an addition to the loan or there is a fine if it does not pay off according to the time agreement. Allowable additions as intended for better returns should not be required from the start, but purely from the debtor's initiative (al-Banjari, 2016).

Wakalah, Hawalah, and Kafalah though considered secondary to primary contracts such as Musharakah and Mudarabah, are a crucial part of the foundation of Islamic Finance. Hawalah means “change” or “transfer” and usually refers to the transfer of debt from the original debtor to the legal personality. Wakalah refers to a contract in which a party (muwakkil) authorizes another party as his agent (wakil) to perform a particular task, in matters that may be delegated, either voluntarily or with the imposition of a fee. Kafalah is an Arabic word for responsibility, amenability, or suretyship. It often refers to an act of someone adding himself to another person and making himself liable to perform the responsibility, together with the person (Maryam Sofia Mohd Suhaimi, et al., 2016).

The legal time is allowed (*jaiiz*). *Wakalah* is the act of someone leaving their dealings to another person on the dealings that can be represented, so that the other person does their business at the time of the representative's life. This *wakalah* can be done without *ujrah* (wages) or can also be done with *ujrah* (*wakalah bi al-ujrah*) (al-Banjari, 2016).

Wadi'ah the law is allowed. Wadi'ah is the property that is entrusted by the owner to someone else for safekeeping, not up to *tasharuf*. If the property is managed or used, it will no longer be categorized as wadi'ah, even if it is



permitted by the owner. If there is a permit to take or use the benefits of the property, while the property is permanent or unchanged, then the contract must be a borrow-use contract, whereas if the permit is in the form of consuming, selling, etc., but guarantees to hand over the property when the owner is assets ask for it, then the contract is a debt contract, both *qard* and *dayn* (al-Banjari, 2016).

Hawalah is a transfer of rights from one dependent to another, that is, the person bears a right to transfer the claim from the person who claims the rights to him, to another person who has rights. *Hawalah* is not categorized as a contract which requires the approval of each party (an-Nabhani, 2002).

RESEARCH METHOD

This research is a qualitative type. The applied research aims to determine how appropriate and good a program and its goals are (Hamzah, 2020) Qualitative research departs from problems that are still dim, sometimes even starting from dark conditions, the scope of discussion is complex and dynamic so that it can develop or even change after the researcher is in the field. Through qualitative research, it is expected to be able to see phenomena more broadly and deeply following what is happening and developing in the social situation studied (Sugiyono, 2017).

A review of the DSN-MUI fatwas related to fintech applications in Islamic financial institutions (LKS) is needed to always improve the quality of fatwas. There are five fatwas of Fintech applications that have been formulated by DSN MUI and are the research subjects, namely: (1) Sharia Card (DSN-MUI, 2006), (2) Sharia Charge Card (DSN-MUI, 2004), (3) Transfer and Collection (DSN-MUI, 2000), (4) Payment Services (DSN-MUI, 2000) (DSN-MUI, 2000), and (5) Sharia Electronic Money (DSN-MUI, 2017).

RESULTS AND DISCUSSIONS

A review of the DSN-MUI fatwa regarding the application of fintech in Islamic financial institutions (LKS) is needed to re-examine the fatwa so that it reaches a higher level. There are five DSN MUI fatwas examined in this study, namely: (1) Sharia Card (2) Sharia Charge Card, (3) Transfer and Collection, (4) Payment Services and, (5) Sharia Electronic Money. This is where a meeting point is needed between the Sharia and the various needs of economic transactions, concerning convenience, security, comfort, and speed.



There are differences of opinion regarding the contracts used in each product related to Fintech in several countries, such as Malaysia, Sudan, Pakistan, and Indonesia. The closing article of each fatwa also states implicitly to always correct the fatwa. The study of these differences is important and urgently needed.

Sharia Card

The National Sharia Council has issued fatwa No. 54/DSN-MUI/X/2006 regarding the Sharia card. This sharia card was initiated to facilitate economic transactions, against the backdrop of requests for fatwas regarding credit cards that are following sharia principles from several Islamic banks (Ibrahim, 2010; 2011).

The basic principle of the sharia card, which refers to a credit card, is to provide bailout services. There are three parties involved in the transaction process using sharia cards, namely: card issuers (*mushdir al-bithaqah*), card holders (*hamil al-bithaqah*) and card recipients (*qabil al-bithaqah*). The contracts stipulated in fatwa no. 54 of 2006, there are three, namely: (1) *kafalah*, (2) *qardh*, and (3) *ijarah*. The *kafalah* contract occurs because of a guarantee from the card issuer to the card holder against the merchant for all payment obligations (*dayn*) arising from transactions between the card holder and the merchant. A *qardh* contract occurs when the card issuer makes a loan to the cardholder through cash withdrawals from the bank or the ATM of the card issuing bank. The third contract is *ijarah*, in which the card issuer as a payment system service provider and cardholder is entitled to get *ujrah*, so the cardholder is subject to a membership fee.

Sharia card products also impose fines for tardiness and *ta'widh*, namely compensation for costs incurred by card issuers due to the cardholder's delay in carrying out its obligations that are due. The difference with conventional credit cards is only in the distribution of the proceeds of fines, namely as social funds, not part of the profits for the card issuer.

If we pay closer attention, there is actually no process of *kafalah* in it. This is because the card issuer pays off the debt that occurs between the card holder and the merchant, then the card holder makes payments to the card issuer. The concept of *kafalah* itself should be a guarantee provided by the insurer (*kafii*) to a third party to fulfill the obligations of the second party (the insured party). The third party needs a guarantee that they will not be harmed by the non-cash



transaction, because if the second party (the one who owes) is unable to pay, the guarantor will pay the debt, without any compensation to the guarantor.

Kafalah according to the definition of *syara'* "is a combination of the guarantor's dependents to the dependents of the guaranteed party in the obligation to fulfill their rights (i.e. debt)". *Kafalah* is usually used for security in the affairs of a person or person, while the term *dhaman* is for security in matters of property (*fi al-amwal*). The laws of *kafalah* and *dhaman* are *jaiz (mubah)*.

The process that occurs is not like that, because from the start the insurer has paid the debt of the second party to the third party, then the second party pays the guarantor the amount of debt that has occurred. This process is actually close to the concept of *hawalah*. The *hawalah* process is the process of transferring debt from one party to another with the consent of all parties. The debt that occurs between the card holder and the merchant is then transferred to become debt from the card holder to the card issuer.

The concept of *qardh* actually can also be applied in this case, where the second party (card holder) takes *qardh* (debt) for payment of transactions with the third party (merchant), after which the second party repays the debt to the card issuer. On the other hand, sharia card holders are also provided with services to take *qardh* either through ATMs or directly to the card issuing bank. If we choose the *qardh* concept for this sharia card product, it will actually make the concept of the sharia card very simple, that is, there is only one contract in one product, namely the *qardh* contract.

The second thing to pay attention to is the merchant fee. This fee is given to card issuers by merchants for transactions using cards as wages (*ujrah*) for intermediary services (*samsarah*), marketing (*taswīq*), and billing (*tahsil al-dayn*). The problem that must be considered is that what the card issuer does to the economic transaction process does not reflect brokering activities (*samsarah*) or marketing assistance. Practically the card issuer is not involved in the transaction process, except in terms of providing bailout funds that will be returned on due or installments. Regarding collection fees, there is no need for bailout funds from the credit card issuer, so that the cardholder will pay installments and bills before maturity directly to the merchant's account. In fact, installment transactions and payments directly to the card issuer. So, in fact there is no right at all to the card issuer to get a merchant fee.



A membership fee is a membership fee and an extension of the membership period of the cardholder as a reward for permission to use the sharia card. There are two types of membership fees, namely the annual fee (annual fee), the amount of which is influenced by the type of card and credit limit given, and the monthly membership fee (monthly membership fee). Even though it is called a membership fee, it is influenced by the size of the existing debt, in essence, it is an addition to debt, and so it can be categorized as usury. Late charges are imposed on cardholders due to late payment of debts. Even though these fines are entirely recognized as social funds, in this transaction there are still additional late payments. This is a part of *jahiliyah* usury.

The end result is that there are several things that need to be examined again, such as the use of the *kafalah* contract where it is more appropriate to use the *hawalah* contract or directly use the *qardh* contract, unclear merchant fees, fines even for social funds but still an additional result of not being unable pay off at maturity, as well as monthly membership, the amount of which is influenced by the amount of debt.

Sharia Charge Card

Another product that is regulated by the DSN is the sharia charge card. Sharia charge card is adopted from charge card. Charge cards are generally almost the same as credit cards. The difference between the two, first, lies in the existence of a usage limit on the credit card, while the charge card is not limited. Second, the debt in the charge card must be paid off at maturity or the card cannot be used (blocked) and subject to a fine for the delay. Third, even though the charge card does not charge interest, there are penalties for not paying the bills when they are due. So, there is *riba jahiliyah*, *nasi'ah* usury, in the charge card.

DSN Fatwa no. 42 of 2004 regulates the use of sharia charge cards, where the point of view is to use limits, fines are recognized as social funds, only for activities that comply with sharia and do not encourage excessive attitudes, and are limited to halal merchants. Sharia card is a bailout card facility that is used by cardholders as a means of payment or cash withdrawal at certain places that must be paid in full to parties who provide services at a predetermined time. There are two contracts related to this sharia card, namely the *kafalah wal ijarah* contract for transactions between cardholders and merchants, and the *qardh wal ijarah* contract for cash withdrawal transactions.



In relation to the provisions of fees, there are three types of fees, namely: (1) membership fee, including an extension of the membership period, as a license to use the card; (2) a merchant fee in which the card issuer may receive a fee taken from the price of the object of the transaction as a form of deployment, marketing and collection fees; and (3) cash withdrawal fee. This cash withdrawal fee is not affected by the amount of the withdrawal amount. This sharia charge card product imposes two types of fines, namely: (1) late charge and overlimit charge. Both types of fines are recognized as social funds.

Sharia charge card products use two main contracts, namely: (1) the *kafalah wal ijarah* contract is used for transactions between cardholders and merchants, and (2) *qardh wal ijarah* contracts for cash withdrawal transactions. So, there are actually three kinds of contracts, namely *kafalah*, *qardh*, and *ijarah*.

There are two types of Islamic charge card products with different contracts, both for transactions with merchants and cash withdrawals. There are two contracts in one transaction, in both types of transactions. However, there has been no change in the contract since the issuance of fatwa no. 42 of 2004 concerning Sharia Charge Card. This product has been implemented in Indonesia, but did not develop due to weak market acceptance, so that no one has issued Islamic charge cards anymore (Darsono, 2017).

There are similarities in the process between the sharia card and the sharia charge card, so the discussion of the *kafalah* contract is not appropriate when viewed from the facts of the *kafalah* and the facts of the transaction. Card issuers provide bailout funds for transactions between cardholders and merchants, then cardholders pay off debts to the insurer (card issuer) before maturity. From these facts it is very clear that it is not the concept of *kafalah* that occurs, but closer to the *hawalah* process, the transfer of debt.

As with the sharia card, you can also simply use the *qardh* contract for transactions with merchants. Where the transaction is a *qardh* contract with the card issuer to settle transactions with merchants made in cash. It's just that, it is necessary to change the transaction process, namely the cardholder takes debt to the card issuer at the limit of the sharia charge card to be entered in a personal account, which is recorded on the card. With this card transactions are made in cash. With this *qardh* pattern, there is only one type of contract in the sharia charge card, namely the *qardh* contract.



Regarding the fee for each cash withdrawal with a *qardh* contract, the amount is fixed, not affected by the amount of the withdrawal made, but it is still an addition. This addition can be categorized as usury. If the use of the facility is subject to a fee, it should not depend on the existence of a transaction, but as a membership fee, where a transaction occurs or does not occur the fee will still be withdrawn from the card holder.

The penalty due to being late in paying off is also an addition that can be categorized as *jahiliyah* usury. Even though these extras are not part of the card issuer's profits, there are still additions due to late payment of debts.

Fines for exceeding the ceiling (overlimit charge) are not necessary, because the concept that the primary cardholder must have the financial capacity to pay off on time requires a limit that cannot be exceeded. It is this part that cannot be removed from the concept of sharia charge cards so that there is a "license" to exceed the limit. The existence of a license to exceed the limit should contradict the concept of limiting the cardholder's financial capacity. On the other hand, the existence of fines exceeding the ceiling with information without the approval of the card issuer is also contradictory, because without approval it should not exceed the ceiling.

Merchant fees are recognized as part of the card issuer's rights, as wages / rewards for *samsarah* and marketing services (*taswiq*) or collection services, which are taken from the price of the object of the transaction. It is necessary to pay more attention. The facts show that there is no role for the card issuer in every transaction, except in the case of bailouts. So, this merchant fee should not exist in the case of transactions with merchants. In fact, a merchant fee makes two contracts in one transaction.

The general membership fee, without being influenced by the transaction made, is actually sufficient to oversee the *hawalah* or *qardh* process that occurs. If it is influenced by the size of the transaction, it appears that there are additions that are not justified by sharia into the transaction.

Transfer and Collection

Transfers and collections are services provided by banks to represent customers in transferring funds from customer accounts (transfers) or collecting collections for customer accounts (collection). Sharia financial institutions are entitled to a reward (*ujrah*) for these services, where customers find



convenience / practicality in transactions. The contract used in this product is the *wakalah* contract, which is the transfer of power from one party to another in certain things that may be done (Darsono, Sakti, Astiyah, Darwis, & Suryanti, 2017).

Transfer and collection service products at LKS have been regulated based on the DSN-MUI Fatwa No. 10 of 2000 about *wakalah*. LKS acts as a representative of customers in financial transaction activities, both in terms of book-entry or collection for customer accounts. LKS has the right to receive *ujrah* or reward in the transfer and collection process.

Transfer and collection products provide many conveniences to customers (Ibrahim, 2017). Money transfers and collections are very simple, because they are not limited by distance. Related to this convenience, LKS gets *ujrah* (wages). Transfer and collection products use a *wakalah* contract. A *wakalah* contract is a statement of consent and *qabul* by the parties to show their will in entering into the contract. The *wakalah* referred to here is *wakalah* with reward, where this type of *wakalah* is binding and cannot be canceled unilaterally.

The use of the *wakalah* contract for this product is correct, so there are no problems arising in connection with this transaction. In this case, the LKS is the representative of the customer to deliver (transfer) certain money to another party. Some countries use *wakalah* contracts for transfer and collection products, such as Sudan and Pakistan (Darsono, Sakti, Astiyah, Darwis, & Suryanti, 2017). Even so, it is possible for this product to only use an *ijarah* contract, that is, by looking at the product as a service, namely a service for transferring and invoicing to customer accounts. LKS provides the money transfer facility and customers who use the facility must pay a fee for the services provided. Either using the *wakalah bil ujah* contract or the *ijarah* contract, both are permitted by the sharia.

Payment Service (Payment Point)

LKS provides products in the form of payment services (payment points). There are three types of systems related to payment services: (1) electronic banking, (2) ATM (automatic teller machine), and (3) standing instruction or automatic debit. The deduction of zakat, infaq, and alms is an example of this auto-debit.

Payment services are facilities provided by Islamic banks to deposit and/or investment account holders to facilitate payment transactions at the expense of



the account in question. Account-holders must register themselves first to use any or all of these facilities. LKS registers registration and authorizes the use of facilities to customers, then LKS determines the terms of use of the facility and has the right to set a fee for the use of the facility. LKS in this case must apply modern information technology and systems appropriately with due observance of the applicable information technology and system risk management standards to anticipate operational risks such as damage/ failure/ disruption to hardware, software, or telecommunications networks.

Payment services are facilities provided by LKS to deposit and / or investment account holders in the context of facilitating payment transactions at the expense of the account in question. Payment products and services in Indonesia use two types of contracts, namely the *wakalah* contract and the *ijarah* contract. The use of the contract rests on the DSN-MUI fatwa No. 9 of 2000 concerning Ijarah Financing and No. 10 of 2000 concerning Wakalah.

The *ijarah* contract is used as a form of providing Islamic financial services from LKS to its customers. The customer acts as the party renting services and various tools in the payment system through banking, such as ATM machines. *Wakalah* contract is used by LKS to carry out various financial transactions and payments. So, LKS acts as a representative who is entrusted by the customer to complete the payment (*wakalah* contract) and provides facilities in the payment (*ijarah* contract), then LKS gets a fee from the *wakalah* and *ijarah*.

Payment service product applications in several other countries are sufficient for the *ijarah* contract, namely Malaysia, Sudan and Pakistan (Darsono, Sakti, Astiyah, Darwis, & Suryanti, 2017). The point of view of these three countries is from the aspect that payment service transactions are a form of service in which LKS get a service fee for the facilities provided. Actually, this *ijarah* contract is sufficient, because the *ijarah* contract can already cover the *wakalah* contract. The use of the *wakalah* contract in Indonesia for payment services is used so that the contract becomes binding and cannot be canceled unilaterally. On the other hand, the use of a *wakalah* contract only for a reward is actually sufficient, because the provision of the various systems required can be part of the process of completing duties as a representative, so there is no need for a double contract, *wakalah* contract and *ijarah* contract.



Electronic Money or e-Money

Electronic money (e-money) is a tool that functions as money. Inside, there is a nominal amount of money stored on the card, which is digital data stored in the memory of a card that is practically carried everywhere. E-money varies, some require users to have an account at a particular bank, but some are sold freely. Through an e-money card purchased with physical money according to the desired value, it can be used to make transactions, namely simply by tapping or swiping at a merchant's payment checkout. Regarding the legal status of electronic money, it can be seen from three aspects, namely: (1) physical aspects of electronic cards, (2) gharar aspects in card issuance, and (3) aspects of its use.

Physical aspects of the electronic card

This electronic money is no different from debit card facts. The bank issues a debit card because the owner of the card has a deposit at the bank where the debit card was issued. Debit cardholders can use them to make transactions because there is a deposit of money that is kept in the bank that issued the debit card. Debit card law itself is allowed.

Issuing cards that function as money like this is allowed, so administrative costs, including the physical production of the card, following the permissibility of card issuance. This ability is due to the similarity with the *hawalah* contract to the bank when transferring certain money which is subject to an administration fee per transaction of a certain nominal value. This administrative fee is justified, because it is an *ijarah* contract, in the form of services provided. Because it is a *hawalah* contract, this electronic money in the *hawalah* contract can be called *muhalbih* (transferred debt).

This *muhalbih* formula must meet four conditions: (1) the debt is an electronic money holder (*mihil*) owed by the electronic money issuer (*muhal 'alayh*); (2) the debt must be a binding debt (*laazim*), not a debt that is not binding (*jaa'iz*), such as the price of goods when the *khiyaar* deadline; (3) The type, grade, value, and deadline are known, and (4) something that can be exchanged or transferred. Based on these four conditions, the status of the electronic money is fulfilled. Therefore, as *muhalbih* used in this *hawalah* contract, this electronic money is also clearly valid.



Gharar aspect in card issuance.

Gharar (obscurity) is what is doubtful between two things that could have happened simultaneously, or most likely, was more worrying between the two. From the facts of e-money, if it is related to the definition of *gharar*, it is clear that this electronic money does not contain *gharar* aspects. This is because the nominal value that can be used is exactly the same as what was deposited.

The administrative fee, in this context, is a service that is allowed because of the services obtained by the electronic money holder. Even if there is *gharar*, it actually occurs when the electronic money is issued by a second party, not a third party. This is because the second party is the direct publisher, while the third party is a partner, who at that time collaborated with the second party. The cost of making and administering the card itself is actually separate from the *hawalah*.

When the cooperation ends, the money cannot be used in connection with the merchant or third party. Even if this is considered *gharar*, what is certain is that the nominal value of the cardholder's money will not be lost. So, actually it can't be called *gharar*.

Aspects of use

The fact that e-money is like a debit card, because the money used in electronic money is consumer money, not debt accompanied by usury, then the status of using electronic money is actually a *hawalah* contract. Debit card users actually make transactions by transferring their funds to another party, through a third party (bank). The funds owned by the customer are stored in the bank, then instruct the bank (which borrows money or gets the customer's money deposited) to transfer it to another party. Therefore, in that law, actually there is also debt, but what owes is not the customer as a debit card user, but a bank.

Hawalah is an agreement to transfer a dependent debt (receivable) to another party. This is an air fact. Based on the facts of *hawalah* and electronic money, the law of electronic money and its use is the same as the law of *hawalah* itself, so the use of electronic money is permissible. This *hawalah* contract is permitted under three conditions, namely (1) it is carried out on fixed debt, which is borne by the bank or card issuer; (2) both debts, both the one that is borne and that which will be paid are the same; and (3) the pleasure of the



person who is the right owner (*muhil*), namely the user of electronic money, not the pleasure of the bank (*muhal 'alayh*).

The case of electronic money is clear that with existing funds on the side of the bank or issuer, the debt on the bank to the user is fixed. Then in the context of what electronic money users are used / transferred to other parties, it is clear that in accordance with the limits they have in the bank account or card issuer, nothing more. If it exceeds the limit, the system will automatically refuse. The third condition, namely the existence of this pleasure clearly exists when the user of this electronic money transfers his funds to another party, namely by ordering the bank / issuer (*muhal 'alaiyh*) to make the payment transfer. With the fulfillment of these three conditions, it is clear that the use of electronic money is a form of *hawalah* contract.

CONCLUSION

Sharia card products still need to be reviewed regarding the use of the kafalah contract for transactions with merchants. A more appropriate contract is *hawalah* contract or debt transfer. This is because the card issuer has provided the bailout first and the card carrier then pays both in due and installments to the card issuer. Regarding merchant fees, there is not enough involvement of card issuers in the economic transaction process. In fact, if you are involved in an economic transaction, either as a broker or in marketing, it results in more than one contract in one transaction. The existence of fines due to late payment at maturity even for social funds also needs to be considered again, because it can fall into the category of *riba nasi'ah* (a type of usury). On the other hand, even though it is called a monthly fee, the amount is determined by the amount of debt incurred which is calculated after maturity, so this is another form of interest.

Sharia Charge Card products are similar to charge cards, where the charge card is another form of credit card. The difference is the absence of a limit for taking credit and not using an interest system, so the sharia charge card is actually issued a fatwa first compared to the sharia card. It's just that in the sharia charge card, a limit is given to take credit, because of the consideration of the prohibition for *israf* (exaggeration). The middle ground chosen was a fine if it exceeded the limit, so that it became confused between carrying out the original form of the charge card and blocking *ishraf* (wasting money) attitude. The existence of fines due to late repayment even for social funds needs to be



reviewed, because it can fall into the category of *riba jahiliyah* (another type of usury). The sharia card is actually not right when using a *kafalah* (guarantee) contract, it should use a *hawalah* contract, a debt transfer.

Regarding transfer and collection products, the use of the *wakalah* contract is appropriate. Even if the *ijarah* contract is used it is also sufficient. Payment service products use *wakalah* and *ijarah* contracts. It should be enough to use only one, whether using the *wakalah* contract or the *ijarah* contract only. Electronic money, whether registered users or not, functions like money, which can be used for economic transactions, because it is a deposit like a debit card, so it can be used. There is no case of *gharar* in this electronic money, because it is clear that the nominal value is being stored. Regarding administration fees and card making, the law is permissible as in the *ijarah* contract. The process in transactions with e-money uses the *hawalah* principle, so that e-money that is patterned as a debit card (*wadi'ah* principle) is allowed, but if the pattern is a credit card (*qardh* principle) then it is not allowed.

Based on the conclusion, it is necessary to review the DSN-MUI fatwas: No. 54/DSN-MUI/X/2006 for sharia card, (2) No. 42/DSN-MUI/V/2004 for sharia charge card, (3) No. 9/DSN-MUI/IV/2000 and No. 10/DSN-MUI/IV/2000 for payment service, and (5) No. 116/DSN-MUI/IX/2017 for using e-money. The using DSN-MUI fatwa No. 10/DSN-MUI/IV/2000 for transfer and collections product collections is appropriate.

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